

State Bar of South Dakota

Ethics Opinion 2003-8

- **Rules: 1.7**
- **Subject: Conflict of Interest**
- **Summary: Lawyer may represent husband and wife with conflicting interests if Lawyer's representation will not be adversely affected thereby and if they consent to the representation.**

FACTS

Lawyer represents husband and wife in a pending bankruptcy case. Two adversary proceedings have been initiated against husband and wife, jointly, which are related to the bankruptcy action. Husband intends to permit judgment to be taken against himself. Wife does not. Can Lawyer continue to represent husband and wife in the bankruptcy action or in any of the related proceedings?

DISCUSSION

Rule 1.7 provides:

(a) Except as provided by paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or same matter before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing.

A lawyer who represents, or formerly represented a client in a matter shall not thereafter represent another person in the same or substantially related matter in which that persons interests are

materially adverse to the interests of the former client unless the former client consents after consultation.

Clearly, Lawyer did not have a conflict when s/he began representing husband and wife in the bankruptcy action. Lawyer is of the opinion that a conflict has arisen because of the adversary proceeding. Lawyer asks if Rule 1.7 prohibits representation of wife in the adversary proceeding. If husband and wife both consent, and Lawyer reasonably believes the representation will not be adversely affected, Lawyer may proceed to represent wife in the adversary proceedings.

Brad A. Schreiber
Chair, Ethics Committee