

ETHICS OPINION 2012-05

Rule: 1.7
Subject: Conflict of interest
Summary: Attorney's service on non-profit board for organization that provides advocates for children in abuse and neglect cases conflicts with Attorney's representation of parents and children in abuse and neglect cases.

OPINION

Attorney has been asked to serve on non-profit board for an organization that provides non-law trained advocates to assist children in abuse and neglect cases. Attorney represents both children and parents in various abuse and neglect cases. Attorney has asked if service on the organization's board would present a conflict.

It is the Committee's opinion that a potential conflict exists under Rule 1.7(a)(2). There is a significant risk that Attorney's representation of the parents in abuse and neglect cases will be materially limited by Attorney's responsibilities to the organization's board and its mission.

It is also possible that the Attorney's representation of the children in an abuse and neglect case may be in conflict with the recommendations of the advocate which again puts the Attorney's representation in conflict with the board and its mission.

Pursuant to Rule 1.7(b)(4), the conflict can be waived if each affected client gives informed consent, confirmed in writing. However, the Committee notes that obtaining informed consent from children in custody with the Department of Social Services may simply not be practical. If Attorney wishes to continue representing children and parents in abuse and neglect cases and avoid a conflict of interest, Attorney may need to decline service on the board as a result.

Neil Fulton, Chair
Ethics Committee
State Bar of South Dakota