

DONALD E. COVEY

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March 10, 1992

RE: Advisory Opinion 92-3

Dear

You have requested the Advisory Opinion of the Ethics Committee with regard to the following factual situation.

FACTS

You were appointed to represent some minor children who were the victims of rape and sexual abuse in connection with criminal charges against the perpetrator. Both the defendants in the criminal action were convicted of some form of prohibited sexual conduct regarding the victims. At sometime after you were appointed to represent the children by the circuit court, the parents of the children retained you to represent the children and one of the parents for the purpose of recovering damages arising out of the sexual contact and rape cases.

Question: You asked, whether or not your representation of the minor children in the criminal action creates a conflict of interest for you in representing them and a parent in a civil action arising out of the same facts and circumstances?

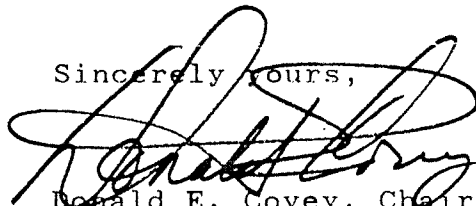
OPINION

It is the opinion of the Committee that the prohibition discussed in State v. Basham, 170 NW2d 238 (SD 1969), relates to the prosecution of a driving under the influence case. In that case, there was an automobile collision. After the prosecutor had successfully represented the state in the prosecution of the driving under the influence charge, he attempted to represent the individuals who were injured in the collision in a civil case against the drunken driver.

Clearly, the Basham case is not applicable to your circumstance since you did not prosecute the criminal cases. It is the further opinion of the Committee that you have properly reviewed Rules 1.7, 1.8 and especially 1.9 in your analysis of your situation.

Therefore, it is the conclusion of the Committee that you have no conflict of interest in representing the child victims and one of their parents in civil litigation arising out of the criminal case in your fact situation.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Donald E. Covey", written over the typed name below.

Donald E. Covey, Chairman
Ethics Committee