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Jerry L. Wattier

Ernest W. Stephens, Retired

May 29, 1987

Re: Ethics Opinion 87-3

Dear

This is written in response to your request for an opinion from the Ethics Committee. You presented the following issue:

Is it appropriate for an attorney handling a voluntary termination of parental rights to have his attorney's fees paid by the prospective adoptive parents on what is intended to be a private adoption?

Additionally, you are concerned about a possible conflict of interest and possible violation of SDCL 25-6-4.2.

The majority of the Committee believes it appropriate for an attorney handling a voluntary termination of parental rights to have his fees paid by the prospective adoptive parents. The Committee, however, does not believe the same attorney should handle the termination and the adoption proceeding. As such, while the attorney's fees might be paid by the prospective adoptive parents, the natural mother should have counsel separate and apart from the attorney representing the adoptive parents.

The propriety of this procedure is based upon:

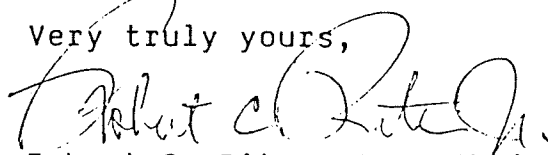
- 1) The attorney handling the voluntary termination must be sensitive to the matter and assure that the source of pay will in no way affect the obligation to exercise professional judgment solely on behalf of the client, and
- 2) The client must be fully informed and consent to the arrangement.

While there appear no canons directly on point, we would refer you to EC 5-21, 5-22 and 5-23, and DR 5-107(A)(1).

As regards SDCL 25-6-4.2, it is our opinion that the fee for advice in the termination of parental rights, or preparation of documents, notices, attendance at hearings or other attorney services regarding that, is not an unauthorized consideration within the meaning of SDCL 25-6-4.2. There is a requirement that such fee not be excessive (DR 2-106(A)), the same as the fee for any other legal service. It would be suggested, however, to rebut any claim of impropriety, that the attorney keep careful records of the legal services performed. We also draw your attention to the fact that it is merely our opinion regarding the interpretation appropriately given to SDCL 25-6-4.2, and we cannot appropriately predict how a Court would view it.

Respectfully submitted this 29th day of May, 1987.

Very truly yours,



Robert C. Riter, Jr., Chairman  
Ethics Committee