
ADMONITION NO. 00-05

CLASSIFICATIONS:

Failure to Withdraw from Representation [DR 2-110(B)(4)]
Conflict of Interest Between Clients [DR 5-105(B) and (C)]
Successive Representation [DR 4-101(B), DR 5-105(A)]

SUMMARY:

In 1987, the respondent began representing a married couple in an ongoing investigation of the care of

their two minor children by the Department of Social Services (DSS). Both members of the couple then had problems which raised issues about their fitness as parents and created the potential for conflict between them. The mother had severe physical and cognitive limitations preventing her from caring on her own for the children, one of whom was also severely disabled. The mother was thus dependent on the father's willingness and ability to act as caretaker for the family, and DSS had threatened custody proceedings if the father left the mother alone with the children. The father was an alcohol abuser with a criminal and psychiatric history and was then facing drunk driving charges on which he was subsequently convicted. The respondent nevertheless determined that the parents' common goal of retaining custody of the children prevailed over any divergence of interests. The respondent did not discuss the divergent interests with the parents before undertaking the dual representation.

In late 1987, DSS filed a care and protection petition after receiving a report that the children had been left in the mother's sole care. The respondent negotiated a resolution based on a plan for increased services, and the petition was dismissed in the spring of 1988 without further proceedings. For about the next eighteen months, the respondent had little or no involvement with the family. As a result, he did not know at the time that the divergence of interests between the parents ripened into an actual conflict in the fall of 1988, when they began accusing each other of physical and mental abuse. The father obtained orders requiring the mother to vacate the home and granting him temporary custody of the children. Although the parents soon reconciled, they continued to have domestic problems. During 1989, the father was accused of failing to obtain adequate medical treatment for the disabled child. In addition, in late 1989, the father was convicted of charges stemming from a burglary and sentenced to one year in jail. The healthy child went to live with relatives, but the disabled child had to be placed in foster care.

The respondent was called back into the case in about early 1990, after the father's incarceration and the child's foster placement. Still unaware of the parents' history of domestic proceedings and marital discord, the respondent resumed his advocacy for both parents to prepare for the return of the disabled child to their custody. However, after the father's release in June 1990, DSS determined that the father was unfit to resume the child's care due to his continued drinking, among other reasons, and the child remained in her foster home on a voluntary placement. At or about that time, despite the parents' apparent united front concerning the children, the respondent became aware of tensions between them, with each parent expressing frustration at the burdens created by the other. Although the respondent then had further indication of differing interests that compromised or likely would compromise his ability to represent both parents, he failed to inquire into those differences before carrying on with the dual representation.

In early 1991, after the father refused to extend the disabled child's voluntary placement, DSS filed a new care and protection petition and obtained her temporary custody. The respondent appeared for both parents in that proceeding. As of the summer of 1991, the respondent had learned of the prior domestic proceedings as well as subsequent allegations by the mother that the father had physically abused her. By then, it should have been obvious to the respondent that regardless of the parents' expressed common goals, their differing interests prevented him from adequately representing each of them in the care and protection proceeding. The respondent did not then withdraw or obtain the clients' consent to the continued representation, and he could not have obtained informed consent under the circumstances.

The respondent represented both parents until March 1992, by which point the parents had separated permanently, with the mother on the street and suspected of drug abuse and the father living with a girlfriend. The respondent finally brought the conflict to the court's attention, and separate counsel was appointed for the mother. The respondent continued to represent the father, however, and turned his attention to regaining the father's sole custody to the total exclusion of the mother. The care and protection proceedings were dismissed and the disabled child returned to the father in December 1992.

The respondent's representation of both parents in the care and protection matters violated Canon Two, DR 2-110(B)(4), and Canon Five, DR 5-105(B) and (C). After March 1992, his continued representation of the father constituted successive representation in violation of Canon Four, DR 4-101(B), and Canon Five, DR 5-105(A). The respondent has no history of discipline. He did not act from wrongful intent,

selfish interest, or deliberate exploitation. Rather, his misconduct stemmed from failure to recognize or address the conflict in timely fashion and, after the conflict become obvious, failure to make a timely or complete withdrawal from the case. The respondent received an admonition for this misconduct.
