

L.E.I. 93-01

**MULTIPLE REPRESENTATION OF LEGAL SERVICES CLIENTS  
THROUGH A PRO BONO PROGRAM**

Legal representation for eligible indigent West Virginians is provided by four separate legal services agencies which cover different geographic areas. They receive most of their funding from a quasi-governmental agency, the Legal Services Corporation in Washington, D.C., and are subject to the corporation's regulations.

The legal services agencies lack the resources and staff to provide legal representation to all eligible people. These agencies, in conjunction with The West Virginia State Bar, sponsor a Pro Bono Referral Project. The Project is composed of lawyers not affiliated with the legal services agencies who volunteer their time to represent clients eligible for free legal services.

Although not all four agencies participate in the Project in precisely the same manner, certain basic procedures are followed. A potential client is interviewed at the legal services agency by nonlegal personnel to determine financial eligibility and the nature of legal representation needed. If all guidelines are met, the client signs a retainer agreement with the legal services agency whether the matter will be handled by a staff lawyer or a pro bono lawyer. If the latter, the legal service agency arranges an appointment for the client with the pro bono lawyer or has one of the Pro Bono Referral Project Coordinators locate the appropriate pro bono attorney.

The legal services agencies have currently adopted the policy that if it has a conflict in representing an eligible client, the client cannot receive representation through the Pro Bono Referral Project, either. For example, if a wife is being represented by an staff lawyer in a divorce, the husband, although also eligible, will not be provided a lawyer through the Pro Bono Project. No other legal services agency will represent the husband, since the jurisdiction of each agency is governed by geography. Which party reaches the legal services agency first controls.

The Committee on Legal Ethics has been asked by one of the legal services agencies and a local bar association which is quite active in the Pro Bono Referral Project to determine if a conflict of interest would exist in two situations:

(1) May one client be represented by an staff attorney and the opposing party be represented by a Pro Bono Referral Project member when both parties were screened by the same legal services staff?

(2) May one client be represented by a Pro Bono Referral Project members and the opposing party be represented by another member when both parties were screened by the same legal services staff?

Our Supreme Court of Appeals has always been sensitive to the need to provide representation to indigent people. In State ex rel. Sowa V. Sommerville, 167 W. Va. 353, 280 S.E.2d 85 (1981), the Court found that the fundamental policy of guaranteeing availability of counsel for indigent criminal defendants outweighed situations which might appear ethically improper. The Court permitted an exception to the general prohibition of associates of

prosecuting attorney's representing criminal defendants for criminal appointments only.

The Committee believes that the importance of providing civil legal representation to eligible indigent clients overrides possible appearances of a conflict of interest so long as fundamental client rights, such as the confidentiality of attorney-client communications and undivided loyalty, are not harmed.

The Committee does not consider either of the two situations described above to present conflicts of interest prohibited by the Rules of Professional Conduct if certain safeguards are employed:

1. Intake should be performed by nonlegal personnel and be restricted to obtain only sufficient information to determine financial eligibility and the type of case. The potential client should be informed of the limited purpose of the intake and of the possibility that the opposing party might also be eligible for legal services representation, although not from two staff attorneys.

2. The retainer agreement should specify that the actual legal services may be rendered by an outside attorney.

3. The pro bono attorney should not have access to the confidential records of the staff attorneys.

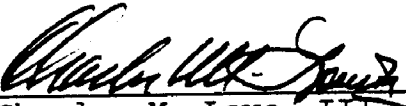
4. Actual litigation support for the pro bono attorneys, to the extent it involves confidential information or the participation of the staff attorneys,

should be provided by other members of the Pro Bono Referral Project.

5. The files kept by the legal services agencies on the cases referred out should not contain confidential information. It is the Committee's understanding that such files currently contain form status reports and court orders, which would not benefit the opposing party.

This opinion follows the lead taken by Alabama (Opinion 91-36), Arizona (Opinion 91-24) and Florida (92-1) in formulating special conflict of interest rules involving the interaction between legal services agencies and volunteer lawyers in order to provide basic legal services to indigents. Presumably, those agencies are subject to the same regulations of the Legal Services Corporation.

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