

You wish to know whether it is ethically permissible for an Assistant Attorney General who represents the Virginia Department of Transportation to assist a church in securing the authorization of a court for the appointment of trustees to convey specified parcels of land to the Commonwealth of Virginia for highway right-of-way purposes.

You advise that after the church and the negotiator for the Virginia Department of Transportation reach an agreement concerning the conveyance, the church adopts a resolution authorizing the Assistant Attorney General to petition the Circuit Court to direct the elected trustees to transfer the title of the real estate to the Commonwealth. You indicate further that the church does not wish to expend monies to hire separate counsel.

Assuming the Office of the Attorney General is authorized to represent private individuals, entities, or any members, agents, trustees or employees of a private entity, the appropriate and controlling rules relative to your inquiry are DR:5-105(A) and (C). The rules prohibiting multiple representation provide that a lawyer shall decline proffered employment if the exercise of his independent professional judgment in behalf of his client will be or is likely to be adversely affected by the acceptance of the proffered employment. Such multiple representation is ethically permissible, however, only if it is obvious that the lawyer can adequately represent the interest of each and if each consents to the multiple representation after full and adequate disclosure of the possible effect on the attorney's exercise of his independent professional judgment on behalf of each.

The relation of attorney and client exists and one is deemed to be practicing law whenever he or she furnishes advice or services which imply possession and use of legal knowledge or skill, or, whenever one undertakes to prepare legal instruments of any character for another who is not his or her regular employer. The committee believes that the preparation of the petition to the Circuit Court to confirm the election of statutory trustees and to secure authorization from the court for said trustees to convey title to all real property, described in the petition to the Commonwealth of Virginia, is beyond the mere taking of pro forma actions to effectuate the agreement previously reached between the church and the Commonwealth's negotiator. Thus, the preparation of the petition may be construed as creating an attorney-client relationship.

It is the opinion of the Committee that the Assistant Attorney General must first be convinced that he can adequately represent the interests of both the church and the Commonwealth. Assuming that adequate representation can be provided, it is further the opinion of the Committee that, under the facts as presented in your inquiry, it would not be improper for the Assistant Attorney General to prepare the petition on behalf of the church providing the church has directed him to do so after consenting to such representation after full and adequate disclosure.

Where an attorney-client relationship is not created, the Committee has previously opined that an attorney must advise an unrepresented party to secure counsel, and inform the unrepresented party that he represents the interests of his client which interest may be adverse to that of the unrepresented party, where the attorney has prepared an agreement

for the unrepresented party's signature to relinquish title to various properties under the terms of the agreement. (See DR:7-103; LE Op. 876)

Committee Opinion
April 7, 1989