

Committee Opinion  
March 1, 1988

LEGAL ETHICS OPINION 964

ATTORNEY GENERAL –  
COMMUNICATION WITH AN  
UNREPRESENTED PARTY:  
REPRESENTATION OF CUSTODIAL  
PARENT IN LAWSUITS AGAINST THE  
DIVISION OF CHILD SUPPORT  
ENFORCEMENT.

With regard to whom the Assistant Attorneys General represent when employed in the support division, the committee opined that in light of the Attorney General's November 23, 1987 letter, the Attorneys General represent the state, deriving their authority through state and federal support enforcement legislation. The committee further opined as follows with regard to the questions presented in the inquiry.

1. The Attorney General's Office represents the Virginia Department of Social Services of which the DCSE is a unit. Representation by the Attorney General's Office is provided to the agency and its employees when acting within the scope of their employment. [See § 2.1-121, Code of Virginia.]

2. Under DR:7-103(A)(1), plaintiff's counsel in an action against the DCSE shall not communicate or cause another to communicate on the subject of the representation with the party in that matter unless he has the prior consent of the lawyer representing such other party or is authorized by law to do so. If the communication does not pertain to the subject matter of the litigation, there is no ethical obligation to refrain from the same.

3. Likewise, legal aid attorneys who are not counsel-of-record shall not communicate or cause another to communicate on the subject of the representation with the party in that matter except with the prior consent of the lawyer representing such other party or when authorized by law to do so, except that communication which does not pertain to the subject matter of the litigation is ethically permissible.

4. In all other circumstances involving the custodial parent, whether or not he has ever been a recipient of public assistance in an action against the DCSE, the Attorney General represents only the state when establishing or enforcing an order.

5. In all circumstances involving the custodial parent, whether or not he or she is a current or former recipient of public assistance and where a state debt for the payment of public assistance exists, the Attorney General represents only the state when establishing or enforcing an order.

6. In the situations described in 4 and 5, the Assistant Attorney General must disclose the potential conflict as soon as is reasonable within the context of these support cases. Since the Attorney General represents only the state, the Assistant Attorneys General must disclose their relationship to the custodial parent seeking establishment or enforcement of support from the DCSE, a state agency.

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7. Since the Attorney General represents only the state in these cases, there is no potential conflict of simultaneous, multiple representation for which the Assistant Attorneys General are ethically required to withdraw. [DR:7-103(A)(1)]

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