

**STATE BAR ASSOCIATION OF NORTH DAKOTA
ETHICS COMMITTEE**

Opinion No. 06-09

The requesting attorney seeks the Committee's guidance relating to her having a former client live in her home.

I. FACTS.

Attorney Jane Smith (a pseudonym) (Smith) sent a letter requesting an opinion from the Ethics Committee. In June 2005, Smith was court-appointed to represent a young woman, A.C., in a mental health proceeding. Smith represented the young woman at a preliminary hearing, during treatment, and at continuing treatment hearings. During each of these hearings, A.C. was committed for treatment at the North Dakota State Hospital (N.D.S.H.).

As A.C.'s counsel, Smith became aware of all the facts and circumstances surrounding A.C.'s case and personal life. A.C. is without many options in terms of a place to live once she is eventually discharged from N.D.S.H. Smith feels that A.C. has progressed substantially in her treatment and discussions are now taking place about where she should ultimately live.

Smith would like A.C. to live in her home. It is not Smith's intent to have A.C. live with her family permanently, but rather to have her home as a "stepping stone" for A.C. to experience what it is like to live in a safe family environment and to get her feet underneath her in terms of transitioning to independent living. Smith and A.C. have discussed that they would like to see A.C. move into a college dormitory by either the fall

2006 or spring 2007 semester. Smith has discussed this arrangement with the N.D.S.H. staff who support the decision and have told her they will stay in contact with her and A.C. should any problems arise.

Smith has notified the Court of the situation and has withdrawn as A.C.'s attorney of record. Smith's letter requests an opinion from the Committee whether it is ethical for A.C. to reside in Smith's home based on the facts and circumstances in this case.

II. DISCUSSION.

The question presented is whether Smith, as A.C.'s former counsel, may have A.C., a former client, live in her home. It does not appear to the Committee that any of North Dakota's Rules of Professional Conduct directly address this issue.

Rule 1.9 of the North Dakota Rules of Professional Conduct states:

A lawyer who has formerly represented a client in a matter shall not thereafter:

(a) Represent another person in the same matter in which that person's interests are materially adverse to the interests of the former client; or

(b) Represent another person in a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents after consultation; or

(c) Use information relating to the representation to the disadvantage of the former client in the same or a substantially related matter except as Rule 1.6 would require or permit with respect to a client.

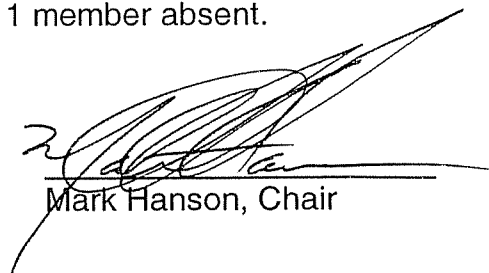
The Rules regarding a conflict of interest in a former client deal primarily with instances where the attorney would take on representation of another party whose interests would be adverse to those of the former client's, or represent someone in the same or similar matter where those interests would again be adverse to the former client. It does not appear that the situation presented by Smith with respect to A.C. would be problematic or violate Rule 1.9.

Any information that related to the representation of A.C. would still have to be kept in confidence, other than information that is "generally known." See N.D.R. Pro. Conduct 1.6 (Confidential Client Information).

III. CONCLUSION.

Under the Rules of Professional Conduct, A.C. living with Smith would not violate any Rules so long as Smith does not take a position adverse to A.C.'s interests with respect to representing another party. Further, so long as Smith maintained information with respect to representation of A.C. in confidence, she would not be violating any Rule. This Opinion is based upon the facts presented in the request letter.

This Opinion was drafted by Anthony J. Weiler and was adopted on June 1, 2006 by a majority of the Committee by an 8-2 vote, with 1 member absent.



Mark Hanson, Chair