

Nebraska Ethics Advisory Opinion for Lawyers
No. 91-2

ONE LAWYER MAY ETHICALLY REPRESENT A DEFENDANT WHO HAS BEEN DIAGNOSED AS HAVING MULTIPLE-PERSONALITY DISORDER, REPRESENTING THE PRIMARY PERSONALITY AND CONSIDERING THE OTHERS AS SYMPTOMS OF THE ILLNESS, IN THE ABSENCE OF A COURT ORDER THAT EACH PERSONALITY IS DEEMED A SEPARATE PERSON AND ENTITLED TO SEPARATE COUNSEL.

FACTS

An attorney currently represents a criminal defendant who has been diagnosed as suffering from a multiple-personality disorder. The examining physician has concluded that while some of the personalities are well formed, rational and quite capable of understanding court procedure, a number of the personalities are immature child personalities who have limited awareness of recent events. The examining physician has suggested that each personality from which testimony is sought be sworn individually. This Committee assumes for the purposes hereof that the multiple personality diagnosis is medically supportable, although the Committee has no basis for making a finding in that regard.

QUESTION PRESENTED

Can one lawyer ethically represent a criminal defendant who has been diagnosed as suffering from a multiple-personality disorder?

DISCUSSION

The principal question in this matter seems to be whether each personality is to be deemed a separate person and therefore a separate client. If each were deemed a separate person in the eyes of the law, then each might be deemed to be entitled to be represented

by counsel pursuant to the Fifth and Sixth Amendments to the Constitution. This is a question of law on which the Committee declines to rule since its only jurisdiction under Supreme Court Rule 5 is to "render to a member upon his written request an advisory opinion or an interpretation of Rules of Professional Conduct under the Code regarding anticipatory conduct on the part of the member." If the Court were to decide that each personality was a person entitled to separate counsel as a matter of law, then the issue would be resolved. Perhaps the Court's ruling on the examining physician's suggestion that each personality be sworn separately will be instructive in the matter.

If the Court does not require separate counsel as a matter of law, does the Code of Professional Responsibility nonetheless require a lawyer to refrain from representing more than one personality, albeit in one body?

If each personality were deemed to be a separate client, a lawyer would have to observe the requirements under Canon 4 for preservation of the confidences and secrets of a client. The lawyer would further have to determine whether, under Canon 5, he could exercise independent professional judgment on behalf of each of the clients. It has been suggested in one situation that the primary personality might wish to pursue a defense that would result in commitment to a treatment facility. In treatment, the primary personality would be developed as the real personality, and the secondary personalities would be eliminated because they are only pathological. The secondary personalities, on the other hand, might each seek a defense that would preserve their existence. See "The Multiple Personality Syndrome and Criminal Defense," Alfred P. French, M.D. and Bryan R. Shechmeister, J.D., *Bulletin of the AAPL*, Vol. 11, No. 1, pp. 17-25 (1983). If each personality were deemed a separate person and client, it would be doubtful that they could give a meaningful consent to be represented in litigation by a single attorney. See *Wendell's, Inc. v. Malmkar*, 225 Neb. 341, 344, 405 N.W.2d 562, 565 (1987).

In the absence of a Court determination that each of the personalities constitutes a separate person entitled to be represented in this criminal matter by separate counsel, this Committee is of the opinion that one lawyer may represent the defendant, with all of his manifestations. French and Shechmeister, *supra*, at pg. 24 make the following comment:

"[F]rom a social policy point of view, however, such representation might be intolerable at best and ridiculous at worst, particularly in view of the fact that multiplication of personalities is a common part of the syndrome. One considers with amusement and distress the chaotic spectacle that would occur as a succession of attorneys, each presenting himself and his new client to the court demands recognition. In short, . . . the socially identified primary personality will be represented and all others will be ignored as symptoms of his illness."

While this Committee claims no expertise in medical matters, the foregoing appears to be a common sense conclusion which we adopt.

CONCLUSION

One lawyer may ethically represent a defendant who has been diagnosed as having multiple-personality disorder, representing the primary personality and considering the others as symptoms of the illness, in the absence of a court order that each personality is deemed a separate person entitled to separate counsel.