99 Formal Ethics Opinion 12

On January 21, 2000, the North Carolina State Bar Council adopted 99 Formal Ethics Opinion 12 (the "Opinion"). The Opinion is entitled, "'Covering' a Bankruptcy Proceeding for Another Lawyer." The Opinion states that an attorney who appears for the debtor's attorney of record at a Section 341 meeting of creditors as a favor to the debtor's attorney is representing the debtor and that all legal duties of representing the debtor apply. (The full text of the Opinion appears below.)

In situations that appear to be covered by the Opinion, the Bankruptcy Administrator for the Middle District of North Carolina intends to inquire on the record as to whether the "covering" lawyer has complied with the Opinion.

99 Formal Ethics Opinion 12

January 21, 2000

"Covering" a Bankruptcy Proceeding for Another Lawyer

Opinion rules that when a lawyer appears with a debtor at a meeting of creditors in a bankruptcy proceeding as a favor to the debtor's lawyer, the lawyer is representing the debtor and all of the ethical obligations attendant to legal representation apply.

Inquiry #1:

Attorney A represents Debtor, an individual, with respect to the filing of a voluntary petition pursuant to Chapter 7 of the Bankruptcy Code. The first meeting of creditors pursuant to Section 341 of the Bankruptcy Code is scheduled by the clerk. Debtor is required to attend and answer questions under oath as presented by the trustee in bankruptcy or any other parties. Shortly before the date of the meeting, Attorney A has a scheduling conflict. This prevents his attendance at the meeting of creditors. Rather than seek a continuance, and being of the opinion that the Section 341 meeting is fairly routine and ministerial in nature, Attorney A contacts Attorney B and asks Attorney B to "cover" for Attorney A at the meeting. Attorney B is neither a member nor an employee of Attorney A's law firm and there is no existing partnership relationship with Attorney A. Attomcy B agrees to accommodate Attorney A.

Must Debtor's prior consent to the representation be obtained, and what steps, if any, must be taken to determine whether there are conflicts of interest?

Opinion #1:

Although assisting Attorney A may be euphemistically described as "covering" for Attorney A, if Attorney B appears with Debtor at the proceeding, Attorney B is representing Debtor. Such representation is subject to all of the ethical obligations set forth in the Revised Rules of Professional Conduct. The consent of the client to the representation by Attorney B must be obtained because the choice of legal counsel is the client's decision. See Rule 1.4(b). In addition, prior to representing any client, a lawyer must determine whether there are conflicts of interest. See Rule 1.7. Therefore, Attorney B must determine whether she has a conflict of interest in representing Debtor at the Section 341 meeting of creditors.

Inquiry #2:

To what extent must Attorney B review the file or otherwise become familiar with the assets, liabilities, exemptions, or pre-petition transfers of Debtor?

Opinion #2:

Even if a lawyer makes a limited appearance in a matter with the consent of the client pursuant to Rule 1.2(c), the lawyer must provide competent representation, which includes adequate preparation under the circumstances. See Rule 1.1(b).

Inquiry #3:

Is Attorney B making a general appearance in the proceeding for all purposes with respect to the representation of Debtor, or is Attorney B's involvement limited to a special appearance for the purpose described above?

Opinion #3:

Subject to the roles of the tribunal and with Debtor's consent, Attorney B may limit her appearance to the representation of Debtor in tbe Section 341 meeting of creditors. See Rule 1.2(c).