SIBLING CONFLICTS

DECISION FRAMEWORK

(Based on COLO. RPC 1.7, 1.8, 1.9; CJD 04-06)

COLORADO OFFICE OF THE CHILD'S REPRESENTATIVE

§ 19-3-203(2) provides that a **D&N court may appoint the same attorney as CFY and GAL for members of a sibling group** as long as the attorney does not assert a conflict of interest. **The value of preserving connections for children and the importance of the sibling relationship support the appointment of a single attorney to represent siblings in D&N proceedings to the greatest extent possible**. CJD 04-06 V.B.4.b *cmt.* This framework supports attorneys in analyzing sibling conflicts.

IS THERE A CONFLICT OF INTEREST?

- Will the representation of one client be **directly adverse** to another client?
- Is there **a significant risk that the representation** of one or more clients will be **materially limited** by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer?

NOTE: *In analyzing conflicts under Colo. RPC, attorneys may consider that* ***the following circumstances alone will not create a conflict****:*

Different ages	*Different likelihood of adoption*	*Different parents*
Different permanency plans	*A purely theoretical or abstract conflict*	*Previous representation of one or more of siblings*
Siblings express conflicting desires or objectives, but the issues are not material to case	*Siblings give different or contradictory accounts of events, but issues involved are not material to the case.*	

No → **Continue joint representation of all children/youth in sibling group.**

Yes →

IS CONTINUED REPRESENTATION OF ALL OR ANY OF SIBLINGS PERMITTED BECAUSE ALL THE BELOW REQUIREMENTS OF 1.7(b) ARE MET?

- ✓ I reasonably believe I will be able to provide **competent and diligent representation** to each affected client
- ✓ The representation is **not prohibited by law**
- ✓ The representation **does not involve the assertion of a claim by one client against another client** represented by the lawyer in the same litigation or other proceeding before a tribunal
- ✓ Each affected client gives **informed consent, confirmed in writing**.
  - *a **CFY** may rely on the informed consent, confirmed in writing, of a youth age 12 or older*
  - *a **GAL** may rely on their determination that the representation does not adversely impact the best interests of the child and must document this determination in writing.*

Note: *At the same time that they must abide by their professional duty of loyalty to their client, attorneys for children and youth should also* ***seek to preserve continuity of legal representation and avoid unnecessary case transfers whenever possible****.*

Yes →

Continue representation of one, some, or all siblings. If necessary, get substitution of counsel for other siblings.

In deciding whether Colo. RPCs require withdrawal from representing one or all siblings, consider:

- *Whether confidential information related to conflict issue has been exchanged with the child/youth who will no longer be represented.*
- *Whether continued representation of the other sibling(s) will prejudice the sibling who will no longer be represented.*

Remember:

- ✓ **Do not use information** relating to the representation **to the disadvantage** of your former client unless Colo. RPCs permit or information has become generally known.
- ✓ **Do not reveal information** relating to the representation of your former client unless Colo. RPCs permit.

No → **Conflict off all siblings and arrange for substitute CFY/ GAL(s).**

Reminders

- ✓ **Assess for conflicts** at outset of representation, when transitioning from GAL to CFY, and throughout representation
- ✓ **Engage in developmentally appropriate communication** with children and youth to assess, explain, and understand their position regarding conflicts.