

You have advised that your law firm has been retained by a motor vehicle insurance carrier to represent a defendant in a personal injury action. The action was filed by your client's daughter who was a passenger in the vehicle belonging to and driven by her father, your client. The action was filed against your client, and against the driver of the vehicle which struck your client's vehicle in the rear. You have filed responsive pleadings and have appeared on behalf of your client at depositions taken of the parties.

Plaintiff's counsel has advised that his client intends to take a voluntary nonsuit against your client. Plaintiff's counsel intends to amend his pleadings to proceed against your client's insurance carrier in the event a judgment in excess of the coverage of the remaining defendant is rendered, pursuant to the "uninsured motorist" provision in your client's insurance policy.

You wish to know whether your law firm may ethically represent the insurance carrier's interest in this matter subsequent to a nonsuit being taken against your current client.

Disciplinary Rule 5-105(D) [DR:5-105] provides that a lawyer shall not represent one client and thereafter represent another client in the same or substantially related matter if the interest of the latter client is adverse in any material respect to that of the former client, except with the former client's consent.

Disciplinary Rule 4-101(A) [DR:4-101] and (B) provide that a lawyer shall preserve the confidences and secrets of a client obtained through the attorney-client relationship and that he shall not use a confidence or secret to the disadvantage of his client or for the advantage of another, unless he receives the client's consent.

Under the limited facts presented in your inquiry, the Committee opines it is not improper for your law firm to represent your client's insurance carrier provided that you receive the consent of your former client after full disclosure under the circumstances, pursuant to DR:5-105(D). In this situation the attorney should be extremely mindful not to reveal any confidences or secrets obtained in the previous employment of his former client, unless the former client explicitly consents thereto, pursuant to DR:4-101.

Committee Opinion
October 26, 1988