

You have advised that you were employed to represent a plaintiff in a medical malpractice suit against a hospital and medical group. Subsequent to that employment, your partner was retained by the insurance carrier which provides premise liability insurance coverage to the aforementioned medical group in a premise liability case brought by an unrelated party.

Your client-medical group has inquired as to whether there is a conflict of interest in pursuing the medical malpractice claim against the medical group while simultaneously defending the same group on an alleged premise liability claim (that defense which is provided by the insurance carrier).

You believe that a conflict could not arise nor could any information be gained from the defense of the premise liability claim that could be used to the detriment of the group in pursuing the medical malpractice claim.

The Committee would direct you to DR:5-105(C) which provides as follows:

A lawyer may represent multiple clients if it is obvious that he can represent the interest of each and if each consents to the representation after full disclosure of the possible effect of such representation on the exercise of his independent professional judgment on behalf of each.

In other words, the attorney must first determine whether the exercise of his independent professional judgment will be affected by a business, financial, property, or personal interest before engaging in an action with the client's consent (See DR:5-101(A)). In addition, an attorney should consider whether a potential conflict may exist under the multiple representation presented in your inquiry with regard to preserving a client's confidences and secrets. A lawyer may not reveal information gained in the course of the professional relationship with a client which would be to the disadvantage of the client, or which would be to the advantage of the lawyer or a third person. A lawyer should be diligent in his efforts to prevent the misuse of such information, and employment should not be accepted which may require disclosure of the same to another client (See DR:4-101(B) and EC:4-5).

The Committee previously opined that in some instances, notwithstanding dissimilarity of the subject matter, simultaneous representation of adverse clients creates a presumption of adverse effect on the lawyer's absolute duty of loyalty, unless both clients consent to the multiple representation (See LE Op. 706). The Committee is of the view that even with the clients' consent, it would be improper to continue the simultaneous, multiple representation under the facts as you have presented them, as it would not be possible for an attorney to adequately represent the interest of a client when the attorney is defending the client in an action one day and is suing the aforementioned client the next day in a separate action brought by an unrelated party, pursuant to DR:5-101(A) and DR:5-105(C). Under the circumstances, the Committee would opine that withdrawal from the representation in both matters, as well as disqualification of the firm would be the appropriate action.

Committee Opinion
October 26, 1988