

MULTIPLE REPRESENTATION –  
PERSONAL INJURY: ATTORNEY  
REPRESENTING DRIVER AND  
PASSENGERS IN AUTOMOBILE  
ACCIDENT AS A RESULT OF DEFECT  
IN TRAILER HITCH AND  
REPRESENTING INSURANCE CARRIER  
IN SUBROGATION CLAIM.

**FACTS:** Attorney X represents Client A, the driver of a vehicle involved in a motor vehicle accident in which two friends, B and C, were passengers. Earlier, Client A had purchased a trailer hitch and travel trailer from Vendor M. Subsequent to the purchase, while A, B and C proceeded downhill on an interstate, the travel trailer jackknifed and injured A, as well as passengers B and C.

During the investigation of A's motor vehicle accident, Attorney X interviewed B and C to determine additional facts. In the independent talks with B and C, both passengers clearly indicated that they know knew of nothing that A could have done which would have caused the accident. It now appears that a product liability claim may be asserted against Vendor M and other persons in the chain of commercial distribution. In addition, you have indicated that Client A's insurer has requested Attorney X to represent insurance carrier on a subrogation suit for the property damage claim paid to A, their insured.

**INQUIRY:** You wish to know whether it would be appropriate for Attorney X to represent A, B and C in a personal injury action against Vendor M and the various persons in the chain of distribution of the products which are believed to have caused the accident. You also ask if it would be ethically permissible for Attorney X to represent A's insurer on a subrogation claim against Vendor M and the various persons in the chain of distribution of the products purported to have caused the accident.

**OPINION:** The Committee would direct your attention to DR:5-105(C), which provides that a lawyer may represent multiple clients if each consents to the multiple representation after full disclosure of the possible effect of such representation on the exercise of the attorney's independent professional judgment on behalf of each. Ethical Consideration 5-16 provides that it is essential that each client be given the opportunity to evaluate his need for representation free of any potential conflict and to obtain other counsel if he so desires. Thus, an attorney should explain fully the implications of the common representation, including circumstances that might cause any of the multiple clients to question the attorney's undivided loyalty. Only upon obtaining the informed consent of each client may he then accept or continue employment.

The Committee has previously opined in LE Op. 218 and LE Op. 620 that the multiple representation of driver and passenger is ethically permissible, even where client/driver may have been at fault, provided the attorney was convinced that he may adequately represent the interest of each and if each client consents to the representation after full and adequate disclosure of the effect on the attorney's independent professional judgment on behalf of each.

It is the opinion of the Committee that if Attorney X can provide obviously adequate representation for Passengers B and C, as well as for Driver A, it would not be improper for him to represent all three in the product liability action after having received consent from each following full and adequate disclosure under the circumstances. The continued role of Attorney X must be re-evaluated, of course, should the situation change and one

or both passengers indicate the desire to assert a claim against the driver or should the Vendor or others in the chain of commercial distribution assert a claim against driver.

With regard to Attorney X's representation of the insurance carrier, the Committee would direct your attention to LE Op. 213 and LE Op. 360, in which the Committee previously opined that it is ethically permissible for an attorney to represent an insured and at the same time represent the insured's insurance carrier against a third party under the subrogation provisions of the insurance contract, assuming that consent from the insurer and the insured has been given after full and adequate disclosure. (See DR:5-105(C))

Committee Opinion  
April 19, 1989