

You have advised that Attorney A was retained to represent the interests of Client X in a lawsuit against Defendant, a principal in a real estate firm, and his corporation, the real estate firm, after X's former attorney withdrew from the representation. After several months went by, Defendant claimed that Attorney B, a member of A's law firm, had earlier handled some collection matters for Defendant or his corporation. Although Attorney A was unaware of any former representation of Defendant or Defendant Corporation by any attorney affiliated with his firm, Attorney B subsequently discovered that a few matters, involving collecting monies for certain owners of real estate whose rental accounts had been managed by Defendant's firm, had been referred to him through another attorney. You have indicated that Attorney had obtained relevant information from employees of Defendant's Corporation to aid in collecting delinquent rent due B's clients/landlords, but he did not gain any information regarding Defendant or his corporation. You have stated that Defendant Corporation's sole involvement in the collection matters handled by Attorney B was that of caretaker of B's client's records.

In addition, you have stated that Defendant claims that Attorney B also had a financial interest in one of the matters he handled which created a potential conflict in Attorney A's current representation. However, neither Attorney A nor Attorney B is aware of any such financial interest, unless payments made to Defendant or his corporation from the proceeds of the collection lawsuits constitutes such an interest.

You have asked the Committee to opine as to whether, under the facts of the inquiry, Attorney A may ethically continue the representation of Client X against Defendant and Corporation. For purposes of this opinion, the Committee will assume that the instant representation of Client X by Attorney A is not substantially related to the representation of Attorney B's former clients in collection matters in which Defendant and his corporation were indirectly involved but were not named parties.

The appropriate and controlling disciplinary rules relative to your inquiry are DR:4-101(A) and (B) and DR:5-105(D). Disciplinary Rules 4-101(A) and (B) provide that a lawyer shall not knowingly reveal a confidence or secret of his client, or use a confidence or secret of his client to the disadvantage of the client or to his own or a third person's advantage. Disciplinary Rule 4-101(A) defines a "confidence" as information protected by the attorney-client privilege under applicable law and a "secret" as other information gained in the professional relationship that the client requested be held inviolate or the disclosure of which would be embarrassing or likely to be detrimental to the client.

Disciplinary Rule 5-105(D) provides that a lawyer who has represented a client in a matter shall not thereafter represent another in the same or substantially related matter if the interest of that person is adverse in any material respect to the interest of the former client unless the former client consents after full disclosure.

The Committee has previously opined that the mere fact that a lawyer has formerly represented a person, who is now the adverse party in a suit brought by the lawyer on behalf of another client, is not sufficient to warrant disqualification of the lawyer on ethical grounds, unless the lawyer possessed confidential information which he obtained

from his first client which could be used in derogation of DR:4-101(B). (See LE Op. 441 and LE Op. 672.) Since nothing in the facts of the inquiry indicate that an attorney-client relationship previously existed between Attorney B and Defendant or his corporation, the Committee believes DR:5-105(D) could not become operative as there is no former client whose interests may be prejudiced by the present representation. In fact, both Attorneys A and B, after having studied their respective client matters, concluded that neither was aware of any prior representation of Defendant or his corporation. Likewise, you have indicated that neither Attorney A nor Attorney B gained any knowledge of Defendant or his corporation nor did Attorney B ever communicate with Defendant. Under the facts, the committee believes the materials provided by an employee of Defendant's corporation to Attorney B, with regard to his representation of clients whose rental accounts the defendant corporation managed, were obtained for the purposes of B's clients and not for any purpose related to the obtaining of information about Defendant or his corporation.

Therefore, the Committee opines that the instant representation of Client X would not be improper unless a previous attorney-client relationship existed between Attorney B and Defendant or his corporation, the subject of which was the same or substantially related to the representation in question. In such circumstances, B would be precluded from the instant representation as a result of confidential information gained about Defendant or his corporation. (See LE Op. 1184.)

Finally, the Committee believes that the financial interest alluded to in the inquiry, or Defendant's management fees which may have been paid as a result of a successful return on a judgment in the collection matters handled by Attorney B, does not constitute an impermissible personal or financial conflict between an attorney and a client as prohibited by DR:5-101(A).

Committee Opinion
September 13, 1990