

An attorney's entire practice is devoted to representing plaintiffs in medical malpractice claims and the attorney's firm desires to employ an attorney presently employed in a medical malpractice defense law firm. At the time of the offer of employment, there are multiple cases which are being handled by the plaintiff's lawyer's firm in which the defense firm is representing the opposing party, and in which the attorney to whom the offer will be made is participating.

The Committee was asked to opine as to any ethical improprieties relative to (1) plaintiff's medical malpractice firm's hiring of an attorney from a defense firm against whom the hiring firm has active litigation; (2) defense attorney's becoming involved in litigation involving former clients if the hiring [plaintiff's] firm is contacted about a claim against a health care provider formerly represented by defense attorney/new hire; and (3) plaintiff's firm withdrawing from litigation in progress in order to employ an attorney formerly involved in the defense, assuming that an agreement was made that the attorney would have no contact with the litigation in progress.

The facts presented clearly indicated that the attorney/new hire was actively participating in continuing litigation on the other side of cases which continue in the firm. Under those circumstances, the Committee opined that, absent the consent of the attorney's former client (the defendant in the medical malpractice cases) after full disclosure, it would be improper for the attorney to personally represent the plaintiff and similarly improper for his new firm to continue to represent the plaintiff. Such conduct would be equally improper whether the plaintiff's firm currently represented the adverse party or was subsequently contacted by the adverse party on a specific matter on which the attorney/new hire had previously worked. The Committee further opined that the only cure to such impropriety would be the former client's consent, as described by DR:5-105(D), and that no cure would be effected simply by an agreement that the attorney would have no contact with the litigation. The attorney's involvement would not be violative of DR:4-101(B) so long as the attorney had not worked on the matter while at his former firm and so long as he did not possess any secrets or confidences of the former client which could be used to the disadvantage of the former client or to the advantage of the new client. The lawyer must be cognizant of the potential effect of his inability to use any such confidences or secrets upon the requirement to provide zealous representation when accepting new clients who are adverse to those he represented while employed at his former firm. [DRs 4-101(B), 5-105(D) and (E); LE Op. 284, LE Op. 441, LE Op. 672, LE Op. 933, LE Op. 993, LE Op. 1085, LE Op. 1139, LE Op. 1180, LE Op. 1384; *Westinghouse Electric Corp. v. Kerr McGhee Corp.*, 580 F.2d 1311 (7th Cir. 1978), cert. denied, 439 U.S. 555 (1978); *Silver Chrysler Plymouth v. Chrysler Motor Corp.*, 518 F.2d 751 (2d Cir. 1975).]

Council Opinion
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