

You have indicated that an attorney participates in a pro bono program with a legal services agency which provides the attorney with professional liability insurance and attorney and support staff assistance in the preparation and litigation of cases undertaken. The legal services agency maintains several branch offices in the general locality in which it operates. In addition, you also advise that the pro bono attorney is entitled to a tax credit for any work performed in the program. The facts you provide indicate that, through the program described, the attorney has agreed to represent a homeless client (A) in a domestic relations case against B.

Furthermore, you indicate that, while the attorney is actively representing A, the attorney is approached by C who wishes to retain the attorney in C's divorce action against Mrs. C. In interviewing C, the attorney discovers that Mrs. C is represented in the divorce action by the same legal services agency under whose pro bono program attorney is providing representation to A.

You have asked the Committee to opine whether, under the facts of the inquiry, it is proper for attorney to accept representation of C and, if so, what disclosure, if any, must be made. Additionally, you ask whether the propriety would be impacted if Mrs. C is represented by an attorney in one branch office of the legal services agency in question while a different branch office provides support and assistance to attorney in his representation of A. Finally, you ask whether the impropriety would be impacted if the attorney were receiving no assistance from the legal services agency but was still covered by their malpractice insurance and continued to receive the tax credit.

The appropriate and controlling disciplinary rules relative to your inquiry are DR:5-105(A) which mandates that a lawyer shall decline proffered employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment unless it is obvious that he can adequately represent the interest of each and if each consents to the representation after full disclosure; and DR:4-101(B) which dictates that a lawyer shall not knowingly reveal a confidence or secret of his client or use that information to either the disadvantage of the client or to the advantage of himself or a third person. [emphasis added]

The Committee has previously opined that it was ethically permissible for an attorney to continue to represent a client whose opposing party's counsel was an attorney with whom the first attorney was simultaneously associated on another unrelated case. See LE Op. 1286.

In the facts you present, the Committee believes that there is no impropriety in attorney representing both A and C simultaneously since the matters involving the two clients are separate and totally unrelated, and since there is no likelihood that A and C will become adverse to each other. The Committee is of the opinion that the mere fact that C's opponent (Mrs. C) in an unrelated matter is represented by an attorney in the same legal services agency which provides assistance to attorney in his representation of A does not demonstrate that the attorney's independent professional judgment on behalf of A will be or is likely to be adversely affected by his acceptance of representation of C.

The Committee cautions, however, that, in the utilization of support services provided by the legal services agency in his representation of A, attorney must carefully guard against any disclosure, inadvertent or otherwise, of C's secrets or confidences.

The Committee is of the view that both variations on your inquiry, i.e. (1) A and Mrs. C being serviced by two branch offices of the same legal services agency and (2) the attorney not receiving any assistance from the legal services agency but still being covered by their malpractice insurance and still receiving the tax credit, are immaterial to the conclusions reached.

Committee Opinion
April 13, 1992