

You have presented a hypothetical situation in which Mrs. A, a nonattorney, works as a victim's assistant with a women's crisis center. Mrs. A also does the billing for her husband's law practice on a non-pay basis.

You indicate that, while doing billing at her husband's law office on a weekend, Mrs. A received an emergency [crisis center] call and agreed to speak with the caller at the law office. No one else was present at the office at that time. The caller, Mrs. B, who already was represented by retained counsel, revealed confidential information about her case to Mrs. A. After this conversation, Mrs. A did not have an ongoing relationship with Mrs. B, due to Mrs. B's ejection from the crisis center "safe house" for violation of center rules. Mrs. A did not reveal to her attorney-husband the fact or the details of her conversation with Mrs. B.

You further advise that, five months later, Mr. B sought to retain Mrs. A's attorney-husband to defend the divorce action brought by Mrs. B and her new attorney, Mrs. B having fired her first attorney. Mrs. A's attorney-husband accepted the case, having no knowledge of his wife's conversation with Mrs. B.

Finally, you indicate that, four months after attorney A accepted employment by Mr. B, Mrs. B hired the fifth attorney to handle her case. Substantial discovery was conducted and, one day prior to two sanctions hearings against Mrs. B's new attorney (and approximately fifteen months after Mrs. A's conversation with Mrs. B), the new attorney filed a motion to remove Mr. B's attorney, husband of Mrs. A, as counsel, pursuant to the Disciplinary Rules. Only when asked about the allegations of the motion, did Mrs. A tell her attorney-husband that she had spoken with Mrs. B in her capacity as a victim's assistant for the crisis center and that the conversation took place while in his law office.

You have asked the Committee to opine whether, under the facts of the inquiry, attorney A may be precluded from representing Mr. B in the divorce action filed by Mrs. B because of confidences revealed by Mrs. B to the attorney's spouse in her private capacity as a victim's assistance counselor, prior to the attorney's having accepted representation of Mr. B, when such conversation took place at the attorney's office after normal working hours.

The appropriate and controlling Disciplinary Rules related to your inquiry are DR:4-101, which requires the preservation of client confidences and secrets; and DR:3-104(C) which requires that a lawyer that employs nonlawyer personnel shall exercise a high standard of care to assure compliance by the nonlawyer personnel with the applicable provisions of the Code of Professional Responsibility.

In keeping with DR:3-104(C), the Committee cautions that an attorney must take care to ensure that nonlawyer employees do not disclose or use client confidences. The Committee is of the belief, however, that the attorney's spouse was acting in her capacity as victim's assistant, rather than as unpaid billing clerk, when she spoke confidentially with Mrs. B. Indeed, the facts indicate that Mrs. B was never a client of the attorney-husband and it is possible that Mrs. A, in her capacity as a victim's assistant, may have an additional and separate professional duty to guard the communications or information gained from Mrs. B.

Since the facts indicate that the attorney-husband had no knowledge of his wife's conversation with Mrs. B, the Committee opines that, since no attorney-client relationship was established, nor confidences shared between the attorney-husband and Mrs. B, the attorney is not precluded from continuing his representation of Mr. B. See LE Op. 1365.

The Committee cautions, however, that should it be subsequently determined by a trier of fact that the attorney does have knowledge of Mrs. B's confidences, the attorney's continued representation of Mr. B, which would necessarily mandate the use of such confidences, may be improper.

Committee Opinion  
August 24, 1992