

You have presented a hypothetical situation in which a law firm does collection work for doctors and also does domestic relations work. The firm is sometimes asked to collect an account for medical services rendered to a child while or after the firm represented one of the parents in a domestic action which may or may not have involved child custody. You indicate that the firm realizes that they could not represent the doctor against the client, but the doctor wants the firm to collect against the client's opposing party, if possible.

You have asked the committee to opine whether, under the facts of the inquiry, it is proper for [a lawyer in] the firm to proceed against the parent they did not or are not representing and who is or was the adverse party in the domestic action. Additionally, you have asked if the committee's response would be different if the doctor's bill were for medical services rendered to the adverse party in the domestic action rather than for services rendered to the child.

The appropriate and controlling disciplinary rules relative to your inquiry are DR:5-105(A) and (B) which provide respectively that a lawyer shall not accept or continue employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by his representation of another client; DR:5-105(C) which establishes the procedure for curing the conflicts encountered under DR:5-105(A) and (B), i.e., it must be obvious that the lawyer can adequately represent the interest of each and each must consent to the representation after full disclosure; DR:5-105(D) which precludes a lawyer from representing a new client against a former client, in the same or a substantially related matter, absent the former client's consent; and DR:4-101 which mandates the preservation of a client's confidences and secrets.

The committee has previously opined that where an attorney had performed certain tasks for customers of an adverse party, no attorney-client relationship existed between the attorney and the adverse party; therefore, there would be no impropriety if the attorney represented a client against the adverse party. See LE Op. 1384.

In the facts you present, the committee believes that since no attorney-client relationship arose between the lawyer and his [previous or current] client's adverse party, i.e., the spouse/other parent, it would not be improper for the lawyer in the firm to proceed against the parent they did not or are not representing and who is or was the adverse party in the domestic action. Furthermore, the committee is of the opinion that it would be irrelevant to the conclusion as to whether the doctor's bill was for medical services rendered to the adverse party in the domestic action or to the child.