

Committee Opinion
December 9, 1987

LEGAL ETHICS OPINION 1002

CONFLICT OF INTEREST –
REPRESENTING CLIENT AGAINST
FORMER CLIENT IN SUBSTANTIALLY
RELATED MATTER.

An attorney was retained to represent an individual in a personal injury action. While the investigation of the accident was being conducted, another attorney in that attorney's office determined that the firm was representing the hospital in a collection case against the new personal injury client. The attorney immediately advised both clients that a conflict of interest existed and provided both clients with a letter detailing the conflict of interest and advising both that he could not continue to represent either party unless both agreed in writing to waive any conflict of interest. The personal injury client promptly signed the waiver and the hospital advised orally that they would do the same. The parties understood that no further action would be taken on the collection case against the client until the personal injury matter was resolved, at which time any remaining balance on the collection case would be paid if sufficient funds were available. Thereafter, the personal injury client attempted to discuss the case with the attorney who advised her that he would be unable to represent her until after he had received a written statement from the hospital. Subsequently, she discharged the attorney.

It may be technically proper, given the above, for the attorney to continue to represent the hospital in the collection matter since the two matters are not substantially related and both clients had knowledge concerning the potential conflict and both waived any conflict of interest claim. However, the attorney must consider the following limitations on the method for the hospital's recovery:

1. It is improper, given the above, for the attorney to attempt to collect the hospital account from the proceeds of the personal injury action, because the information was learned through the representation of the attorney's former client. [DR:4-101(B)(2); EC:4-6]
2. It is improper, given the above, for the attorney to advise any other person, including new counsel, of the personal injury claim because the information was learned through the representation of the attorney's former client. [DR:4-101(B)(2), (3)]

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