

Law firm A is the successor to law firm B, a professional corporation formed in July 1981 by X and Y. X and Y are brothers; Y is now the circuit judge for that county. The original shareholders in law firm A were X and Y. Z became a shareholder in March 1982. Y left the firm in November 1983, and continued his practice of law elsewhere until he became circuit judge in March 1986. At the time Z joined the firm as an associate in August 1981, the firm was representing three sisters in a matter. When Y left the firm in 1983, an agreement was drafted which concerned, in relevant part, the division of legal fees in that matter, which was being handled on a contingency fee basis. Z can find nothing in the files to indicate that the agreement was discussed with or approved by the firm's client, and X states that he does not recall that the agreement was discussed with or approved by the firm's client.

After November, 1983, members of the firm continued to work jointly with Y on various aspects of the matter, including the development of witnesses and expert testimony, discovery and trial strategy and preparation. Z was primarily responsible for scheduling meetings, drafting documents, and general oversight of the case. The matter was set for trial originally in April 1985, but was nonsuited and refiled in that month.

Early in 1986, after Y was appointed to the circuit court judgeship, he withdrew as counsel in the matter. About that time, there was apparently a conversation between X and Y which resulted in X informing Z and another associate that Y was no longer claim to any interest in the matter. This was later reiterated, to Z's recollection, by X in December 1986, at a meeting among X, the other associate and Z.

At the time Y became circuit judge, the firm developed consent forms to be used in cases where both sides consented for Y to hear a case. These forms did not include any disclosure of financial interest because Z did not then believe Y had interest in any case being handled by the firm. The forms have been filed in a number of cases and either the associate or Z have appeared as counsel before Y in at least six matters.

After March 1986, the matter proceeded to its second trial date and was handled for the firm's clients by the present members of the firm. The case was settled in September 1987. In December 1987, X advised Z that Y had stated to X that Y expected payment of a share of the legal fees in the matter. Y later stated to Z that Y had no conversation in 1986 with X concerning the legal fee agreement and that Y had a continuing expectation that Y would receive payment of a share of the legal fees pursuant to the 1983 agreement.

Based upon the above, there is nothing within the Code of Professional Responsibility which would require the law firm to disclose that the judge had a financial interest in a case being handled by the firm, as long as the judge was no longer involved in any manner with that case. See LE Op. 552.

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Given the above, the Committee opines that the provisions of DR:2-105(D) were not violated in this situation since the client had been dealing with the lawyer turned judge all along. No new counsel was brought into the case; rather, the agreement was made to facilitate accounting between the judge and his former firm.

Given the above, if the agreement was initially proper, there is nothing within the Code of Professional Responsibility which would prohibit the continuance of the agreement after the former partner became a judge. [DR:2-105(D); LE Op. 552]

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