

Committee Opinion
March 23, 1988

LEGAL ETHICS OPINION 1057

CONFLICT OF INTEREST – MULTIPLE
CLIENTS – INSURANCE.

You advise that a law firm represents a corporate defendant in a civil suit in federal district court. The corporation believes that a certain insurance policy it had in effect provides coverage for liability in defense of the claim. The insurance carrier has issued a reservation of rights. The law firm hired by the corporate defendant has represented the insurance company before, but does not have any present or ongoing cases on its behalf. Without advising the corporation's in-house counsel that the law firm has represented the insurance company in other matters, the law firm requests and has furnished to it the draft of a letter the corporation's in-house counsel was preparing to send to the insurance company in an effort to have the company confirm its coverage. The law firm then recommends to the corporation's in-house counsel that certain legal arguments the in-house counsel had planned to advance to the insurance company not be made at that time. The corporation's in-house counsel relies on that advice. It later turns out that the insurance company is receptive to some of the arguments the law firm advised the in-house counsel not to make.

You advise that there is no evidence that the law firm used the confidential information it received from the in-house counsel to prejudice the corporation's position with the insurance company. You also advise that there is no evidence that any information was gained by the law firm and then passed on to the insurance company.

You wish to know whether the law firm violated any of the provisions of the Virginia Code of Professional Responsibility.

Based upon the information you provided, the Committee opines that DR:4-101 dealing with the preservation of client confidences and secrets was not violated.

Disciplinary Rule 5-105(A) states "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, except to the extent permitted under DR:5-105(C)." Nothing within the facts provided indicates that DR:5-105(A) has been violated. Disciplinary Rule 5-105(C) states that "In the situations covered by DR:5-105(A) and (B), a lawyer may represent multiple clients if it is obvious that he can adequately represent the interest of each and if each consents to the representation after full disclosure of the possible effect of such representation on the exercise of his independent professional judgment on behalf of each."

Disciplinary Rule 5-105(D) states that "A lawyer who has represented a client in a matter shall not thereafter represent another person in the same or substantially related matter if the interest of that person is adverse in any material respect to the interest of the former client unless the former client consents after disclosure." If the law firm handles the insurance company's matters from time to time, whether on retainer or not, whether presently engaged or not, it would be subject to the proscriptions of DR:5-105(B) and

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consequently would have to comply with the provisions of DR:5-105(C) and obtain consent after full disclosure from the multiple clients. If, on the other hand, the law firm's representation of the insurance company was not ongoing, but was based on the completion of a specific project which is not completed, then DR:5-105(D) would control. Nothing within the facts you provided indicates the firm was engaged or had been engaged to interpret the particular policy terms in issue in this instance for the insurance carrier; therefore, the Committee opines that the two matters are not substantially related. Since the two matters are not substantially related, consent and disclosure would not be necessary. (See also LE Op. 873)

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