

Committee Opinion
October 18, 1988

LEGAL ETHICS OPINION 1139

CONFIDENTIALITY – CONFLICT OF
INTEREST – DIVORCE – FORMER
CLIENT: ATTORNEY JOINING LAW
FIRM AND PARTNER REPRESENTING
CLIENT IN ACTION AGAINST FORMER
CLIENT.

You have advised that Attorney A represented wife in a divorce action against husband #2 in 1983. In 1984 wife married husband #3. In 1987 Attorney A and Attorney B formed a partnership for the practice of law. Now husband #3 has retained Attorney B to file an action for divorce against wife on fault grounds.

You wish to know whether it is improper for Attorney B to continue the representation of husband #3.

Disciplinary Rule 5-105(D) [DR:5-105] provides that an attorney 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, except with the former client's consent after full and adequate disclosure.

Although Attorney A had represented wife in a prior divorce action against husband #2, the Committee believes that the current representation by Attorney B of husband #3 in a divorce action against wife is not substantially related to the former divorce action in which Attorney A represented wife. If it involves a completely different set of facts and circumstances, and is in no way related to the prior divorce proceeding, the representation in the current matter would not be improper simply because Attorney A represented wife in the earlier divorce action.

The Committee would direct your attention to LE Op. 1065, which involved an attorney who had previously represented a client in a "CON" application for a fixed MRI unit and who, after joining another law firm, was subsequently employed to represent another client in a "CON" application for a mobile MRI unit. While he was representing his present client in a "CON" application, his former client was being represented by another firm for the same. In this instance, the Committee was of the opinion that the two matters were not substantially related merely because of representing a different client in its attempt to show cause for a mobile MRI unit at another facility.

Also, Attorney A should be mindful of his continuing obligation to his former client to preserve the confidences and secrets gained from prior representation. (See DR:4-101(A) and (B)) It would also be wise for the attorneys not to discuss the current matter as a precaution.

The Committee would therefore opine that it is ethically permissible for Attorney B to continue representing husband #3 in a divorce proceeding against attorney's former client, if the matters are separate and are not substantially related. There is no basis for a

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conflict per se under the facts you have presented merely because a party to the current action was also a party to the previous, separate action. However, the representation does require further inquiry to determine whether related issues arose in the earlier divorce action which might render the current representation improper. (See LE Op. 888)

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