

Committee Opinion
January 4, 1989

LEGAL ETHICS OPINION 1147

CONFIDENTIALITY – DISCLOSURE OF
CLIENT IDENTITY – FORMER
CLIENTS: REVEALING IDENTITY OF A
FORMER CLIENT WHO IS OPPOSING
COUNSEL IN DIVORCE ACTION.

You have indicated that you were recently involved in a custody and support action in which counsel for the adversary party had represented you in your own divorce approximately five years ago.

On the morning of the first hearing in the custody matter, your client asked whether opposing counsel had ever represented you in a divorce. You were quite surprised by this question and your client's response that her husband had "thrown it in her face."

It is your opinion, given the character of opposing counsel's client, that disclosure of his prior representation of you was improper since it was inevitable that his client would use this information in an attempt to intimidate your client. It appears from the facts you have presented that there is a difference of opinion as to whether opposing counsel actually divulged any confidential information. Opposing counsel denies having ever discussed any confidential matters with his client. In fact, he is perplexed by the allegations and asks for more particulars. However, you know of no other means through which his client could have obtained this information.

You wish to know whether the attorney's disclosure of his prior representation of you to his present client was improper.

Given the previous attorney-client relationship and the current professional relationship between opposing counsel and you, the Committee believes that disclosure to opposing counsel's client as well as to your own client may have been required prior to acceptance of employment, pursuant to DR:5-101(A) and DR:5-105(A). Disciplinary Rule 5-101(A) provides as follows:

A lawyer shall not accept employment if the exercise of his professional judgment on behalf of his client may be affected by his own financial, business, property or personal interest, except with the consent of his client after full and adequate disclosure under the circumstances.

Disciplinary Rule 5-105(A) also provides that a lawyer shall decline preferred employment if the exercise of his independent, professional judgment in behalf of a client is likely to be adversely affected by the interests of another client.

The Committee opines that an attorney's disclosure to his client of a prior representation of another client is ethically proper where the former client and the attorney are the opposing counsel in the current litigation. This disclosure, together with the fact that the prior representation will not adversely affect the attorney's independent

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professional judgment, should be made to the client to allow him or her the opportunity to give his or her informed consent for employment. Further, the Committee believes that the mere fact of prior representation in a divorce matter should not have caused embarrassment, nor should it have been detrimental. The Committee opines that once information has become a matter of public record, it is no longer confidential unless the attorney should have known or it is obvious that such information may be construed to constitute a "secret" under DR:4-101 and should remain confidential (emphasis added).

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