

Committee Opinion
December 9, 1988

LEGAL ETHICS OPINION 1180

CONFLICT OF INTEREST – DIVORCE:
REPRESENTATION OF A CLIENT
AGAINST A FORMER CLIENT IN AN
UNRELATED MATTER.

You have advised that Attorney A has been requested to represent Mrs. P in a divorce action against Mr. P. You do not state whether the action will be contested. In Attorney A's prior employment with law firm PC, he assisted in the representation of Mr. P in a lawsuit against a town to establish road boundaries relative to property owned by Mr. P. To the best of his recollection, Attorney A's involvement was limited to reviewing deeds, and he does not recall personally meeting Mr. P. You indicate that the information gained by Attorney A during the course of assisting in the representation of Mr. P was limited to general financial matters and only that Mr. P's property value was enhanced given the successful conclusion of Mr. P's lawsuit against the municipality. Attorney A was not involved in any specific discussion relative to the value of the land and was also aware that Mr. P had some difficulty in timely paying his bill to law firm PC.

You wish to know whether representation of Mrs. P is proper under the above circumstances.

Disciplinary Rule 5-105(D) [DR:5-101] requires that a lawyer who had 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. The key principles involved in the situation you have described are whether the prior representation meets the "substantially related" criteria and whether Attorney A gained any confidences or secrets during the representation. Clearly, the real estate matter is only related to the current domestic relations matter insofar as it is information relative to Mr. P's financial holdings.

Under the facts as you have stated them, the Committee opines that the real estate and domestic relations matters are not substantially related and that any information gained as to Mr. P's financial holdings was of a general nature. Furthermore, since the suit was successfully concluded on his behalf, that general information is also information of a public nature and not a confidence or a secret as defined in DR:4-101(A).

Thus, since no substantial relationship exists between the prior and the present litigation, and since no confidences or secrets were gained by Attorney A during the prior representation, the Committee opines that Attorney A's representation of Mrs. P in the divorce action would not be violative of the Code of Professional Responsibility. (See LE Op. 672, LE Op. 766)

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