

Committee Opinion
December 14, 1988

LEGAL ETHICS OPINION 1181

CRIMINAL REPRESENTATION –
CONFLICT OF INTEREST – MULTIPLE
REPRESENTATION: REPRESENTING
MULTIPLE CO-DEFENDANTS.

You have advised that Attorney A has been consulted by Clients X, Y, and Z who are charged with simple possession of marijuana, a first offense. Client X has admitted both to owning the pipe and to having obtained the marijuana which was smoked in the pipe. Clients X, Y, and Z all admit to smoking the marijuana. You have further advised that Attorney A believes it would be in the best interest of each of the potential clients, X, Y, and Z, not to testify at trial.

You wish to know whether Attorney A's multiple representation of Client X, Y, and Z would be permissible under the Virginia Code of Professional Responsibility. You further wish to know whether the execution of an agreement by all three defendants indicating their desire for Attorney A to represent them despite any potential conflict of interest would have an impact on Attorney A's ethical responsibilities.

Disciplinary Rule 5-105(B) requires that a lawyer shall not continue multiple employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by his representation of another client, except to the extent permitted under DR:5-105(C). The Committee opines that since Client X admits to owning the pipe and to having obtained the marijuana which was smoked in the pipe, and since Clients Y and Z may be called by the prosecution as witnesses, it would be improper for Attorney A to represent any of the three defendants in the instant matter. Furthermore, irrespective of X's ownership of the pipe and substance, any of the three defendants may be called by the prosecution as witnesses against the others. If Attorney A represent all three defendants, he may be in the untenable position of having to cross-examine his client on the same matter as his defense of the same client, in order to exonerate another client. The clients' consent permissible under DR:5-105(C) is only valid if it is obvious that the lawyer can adequately represent the interest of each client. Thus, the Committee opines that under the circumstances described in your inquiry, and because of the potential status of each defendant as witness for the Commonwealth, such adequate representation of each client's interest would be doubtful. (See LE Op. 307)

Although there are also constitutional issues regarding the guarantee of effective assistance of counsel involved in multiple representation of criminal defendants, those are legal issues beyond the purview of the committee.

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