

Committee Opinion
May 30, 1989

LEGAL ETHICS OPINION 1239

CONFLICT OF INTEREST – MULTIPLE
REPRESENTATION – VICARIOUS
DISQUALIFICATION: LAW FIRM
REPRESENTING CLIENT ADVERSE TO
ANOTHER ATTORNEY'S CLIENT.

You have advised that Client A is coexecutor of his mother's estate along with Attorney B who represents Client A exclusively on all matters in connection with his mother's estate and his interest therein as a beneficiary. Some time after the foregoing relationship was established, Client A invested a substantial sum of money in a small business enterprise ("the Enterprise"). In the process of organizing its affairs, the Enterprise obtained a lease of a desirable space in which to run its operations, which lease was in the corporate name and signed by the organizer as "President." However, delays, such as the incorporation of the Enterprise, were encountered in getting the Enterprise out of the planning stages and open for business. During that time, one of the active investors, C, broke off from the Enterprise and started his own business of the same nature as the Enterprise. Later, Investor C approached the same landlord and was successful in getting the landlord to cancel the existing lease with the Enterprise and then lease the same space to C. Consequently, the Enterprise was unable to commence business and Client A's investment was a total loss.

Recently, Client A has learned that the law firm of Attorney B represented Investor C in dealing with the landlord. Apparently, it became known to B's law firm when Investor C was separating from the Enterprise that Client A was also an investor. Another attorney of that firm contacted Attorney B inquiring whether there would be a conflict of interest for their law firm to simultaneously represent Investor C in his business endeavor. Attorney B replied that he saw no conflict between Client A and Investor C in their independent representations and at no time did he ask or receive Client A's consent for the representation of C. Neither Attorney B nor his law firm had ever advised Client A with regard to his investment in the Enterprise.

Attorney B continues to be coexecutor with Client A in handling all legal matters with respect to A's mother's estate, and the law firm of Attorney B continued to represent C after Client A informed Attorney B of what he believed to be an "adversarial relationship."

You wish to know whether it was ethically proper for Attorney B's law firm to continue to represent C under the circumstances.

The appropriate and controlling rule relative to your inquiry is DR:5-105(C), which provides that 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. The Committee previously opined

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in LE Op. 706 that representing adverse clients creates the assumption of adverse effect on the attorney's absolute loyalty to each client. Therefore, absent consent from both clients, the entire firm is disqualified from representing either party pursuant to DR:5-105(C) and (E). Notwithstanding the dissimilarity between the representation of A by Attorney B in matters associated with the estate of A's mother and the representation of Investor C by the firm in the lease negotiation between C and the landlord, the Committee is of the view that it is not obvious that the best interest of each client can adequately be represented by the firm or Attorney B when the clients have conflicting interests. Therefore, there can be no representation, even with the consent of each client.

Furthermore, the Committee opines that should, at any time, the parties become adversary to each other, the entire firm would be disqualified from representing either party in the matter in litigation. (See LE Op. 371)

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