

Committee Opinion
June 13, 1989

LEGAL ETHICS OPINION 1244

CONFLICT OF INTEREST –
FEES/ATTORNEY'S LIEN – PERSONAL
INJURY PRACTICE: LAW FIRM
REPRESENTING PLAINTIFF AND
DEFENDANT; ASSERTING
ATTORNEY'S STATUTORY LIEN
AFTER WITHDRAWAL.

You have asked the Committee for guidance as to any impropriety of the law firm's conduct with regard to the continued representation of plaintiff in a personal injury action after disclosure of a conflict of interest when the plaintiff was informed by letter of the representation of the defendant by another partner of the law firm. In addition, you have inquired whether the attorney may assert a statutory lien under the circumstances, after plaintiff/client discharges the law firm from further representation.

The following is a summary of the relevant facts which form the basis of your inquiry. Attorney A of Law Firm X was retained by plaintiff, concerning a personal injury matter, while Attorney B, a partner of A's, was discussing the representation of defendant with regard to the same accident with a member of defendant's family. Both Attorney A and his partner initiated the routine letters and notifications to develop the file and both were unaware of the involvement of the other. This mutual unawareness continued until plaintiff received the letter of representation of defendant by Law Firm X at which time plaintiff contacted Attorney A to discuss the implications and ramifications of Law Firm X's past and continued involvement. As a result, Attorney B advised defendant and his family of the circumstances and, with the consent of the defendant and his family, Attorney B withdrew as counsel and sealed the client's file with instructions not to open without permission of Attorney B. In addition, all persons in the office who knew anything about the file or were involved with Attorney B were instructed not to discuss the matter with Attorney A. Attorney A continued in the representation of plaintiff with his consent. Subsequently, Attorney A was discharged, whereupon he notified plaintiff's new counsel that a statutory lien was being asserted for the previous services rendered on behalf of plaintiff. The only discussions between Attorney A and his partner, Attorney B, have regarded the possibility of a conflict of interest and the possible appearance of impropriety, issues which were raised by plaintiff's new attorney.

The Committee believes the appropriate and controlling disciplinary rules relative to your inquiry are DR:5-105(B) and (C), which provide that a lawyer shall not continue multiple employment if the exercise of his independent professional judgment on behalf of a client will be, or is likely to be adversely affected by his representation of another client, unless it is obvious that he can adequately represent the interests of each and if each consents to the representation after full disclosure of the possible effect of such representation on the exercise of the attorney's independent professional judgment on behalf of each. Under the facts as provided, the Committee would opine that there has been no impropriety relative to Law Firm X's conduct with regard to the simultaneous representation of plaintiff and defendant in the instant matter. Where, in the initial stages of taking on representation of a client, an attorney or his client learns that a partner of the

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attorney represents the opposing party, the client should be so advised and the client should be given the opportunity to determine if the attorney should withdraw under the circumstances. It appears that Attorney B consulted his client who then consented to allow Attorney B to withdraw as counsel with the promise of preserving all information gained in the attorney/client relationship as privileged. Thus, assuming that plaintiff consented to the continued representation by Attorney A after full and adequate disclosure under the circumstances, the continued representation of plaintiff by Attorney A is ethically permissible providing that Attorney A does not become privy to any confidences or secrets gained during the representation of defendant by Attorney B.

The Committee is also of the view that, under the facts indicated, Attorney A would be within his rights to assert a statutory lien pursuant to § 54.1-3932 of the Code of Virginia, based on the application of quantum meruit for the reasonable value of the services rendered by attorney if the fee was based on a contingency agreement. (See *Heinzman v. Fine, Fine, Legum & Fine*, 217 Va. 958, 234 S.E. 2d 282 (1977) and LE Op. 936) The satisfaction of the lien may be a matter of factual dispute and as such the resolution of the dispute and the sums involved are beyond the purview of the Committee.

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