

Committee Opinion
July 25, 1989

LEGAL ETHICS OPINION 1257

CONFLICT OF INTEREST – ZEALOUS
REPRESENTATION: ATTORNEY
OBTAINING CRIMINAL WARRANT
AGAINST CLIENT WHILE
CONTINUING TO REPRESENT CLIENT.

You have advised that Attorney A was retained by Client X to represent him on a charge of driving under the influence, for which Attorney A received partial payment from Client X in the form of a personal check. Prior to trial, Client X's check bounced and Attorney A forwarded a certified letter to Client X, advising him that he must make restitution of the bad check within five days; however, Client X failed to do so.

On the morning of the trial, Attorney A produced evidence of the bounced check at the magistrate's office of the jurisdiction in which Attorney A practices, which jurisdiction is neighboring to the jurisdiction in which Client X is to be tried. The magistrate issued a felony arrest warrant against Client X, listing a police detective, who accompanied Attorney A to the magistrate's office, as the complainant. That same morning, following the issuance of the warrant, Attorney A appeared at trial to represent Client X on the DUI charge without having informed him of the existing warrant for his arrest issued by the magistrate's office. Client X was convicted and subsequently served with the felony arrest warrant which provided for payment of a bond to secure his release on that charge.

You wish to know whether Attorney A's behavior constituted a violation of those ethical standards which govern conflicts of interest, zealous advocacy and avoidance of actions to the detriment of one's client.

The Committee believes the appropriate and controlling rules relative to your inquiry are DR:5-101(A), which provides that a lawyer shall not accept employment if the exercise of his independent 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, and DR:7-101(A)(3), which states that a lawyer shall not intentionally prejudice or damage his client during the course of the professional relationship, except as required under DR:4-101(D). Also, Ethical Consideration 5-2 [EC:5-2] provides that a lawyer should refrain from acquiring a property right or assuming a position that would tend to make his judgment less protective of the interests of his client. The self-interests of a lawyer which may affect property of the client may interfere with the exercise of the lawyer's independent judgment on behalf of his client; if there is a likelihood of interference that can be foreseen by the lawyer, he should explain the situation to his client and should decline employment or withdraw unless his client consents to the continued representation after full disclosure (See also EC:5-3).

The Committee has previously opined that where an attorney will obtain a criminal warrant against the judgment debtor, the continued representation of the client against the judgment debtor is improper absent the informed consent of the client after full and

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adequate disclosure prior to obtaining a criminal warrant, since there is a likelihood that the self-interests of the lawyer would be in conflict with those of his client as both seek to recover a debt from the same, but limited, source. (See LE Op. 1230) While the attorney is not the complaining witness named on the felony arrest warrant in the instant matter, if in naming someone else the attorney sought to circumvent that which is ethically prohibitive, the attorney may have violated DR:1-102(A)(2).

Under the facts presented in the inquiry, the Committee would opine that where an attorney has sought to obtain a criminal warrant against his client, the continued representation of the client in any matter is improper absent the informed consent of the client after full and adequate disclosure prior to obtaining the criminal warrant. The Committee believes that the instant case is one in which the self-interests of the lawyer would interfere with the exercise of his independent judgment on behalf of his client and one in which the lawyer may appear to have prejudiced and damaged his client during the course of the professional relationship as proscribed by DR:7-101(A)(3).

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