

Committee Opinion
October 19, 1989

LEGAL ETHICS OPINION 1286

CONFLICT OF INTEREST/
DISCLOSURE: ATTORNEY
REPRESENTING A PARTY WHERE
OPPOSING COUNSEL IS ALSO BEING
ASSOCIATED WITH IN AN
UNRELATED MATTER.

You have advised that in a small town with a limited number of attorneys, it becomes necessary to associate with other attorneys in the town on certain cases. Thus, Attorney A may be approached by an individual to represent him or her and later discover that the opposing party's counsel is an attorney with whom Attorney A is presently associated on another unrelated case.

You wish to know whether Attorney A may properly continue to represent a client who is adverse to a party represented by another attorney with whom Attorney A is associated in an unrelated matter if the client consents to the representation after full and adequate disclosure of the professional relationship and has been presented the option for counsel to withdraw from the representation.

The Committee believes the appropriate and controlling rules relative to your inquiry are DR:5-101(A) and DR:5-105(A), (B) and (C). The rules provide 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 interests, except with the consent of his client after full and adequate disclosure under the circumstances (DR:5-101(A)). In addition, Ethical Consideration 5-2 [EC:5-2] provides in part that a lawyer should not accept proffered employment if his personal interests or desires may affect adversely the advice to be given or services to be rendered the prospective client.

Disciplinary Rule 5-105(A), (B) and (C) provides that a lawyer shall decline proffered employment or shall not continue multiple employment if the exercise of his independent professional judgment 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 interest of each and if each consents to the representation after full disclosure of the possible effect of the lawyer's professional judgment on behalf of each in the multiple representation. Since the matters of Attorney A's clients are separate and substantially unrelated and since there is no likelihood that Attorney A's clients will become adverse to each other, nor is there any indication under the facts that the clients have potentially differing interests, the Committee is of the view that the multiple representation is ethically permissible since it is obvious that Attorney A can adequately represent the interest of each client.

The Committee directs your attention to LE Op. 190, "Personal Interests Between Opposing Attorneys Which May Preclude Representation," which, in the Committee's view, is dispositive of your inquiry. The prior opinion states that representation of opposing parties by attorneys who are members of the same nuclear family is per se

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unethical and cannot be permitted even where there is disclosure by the attorney and consent given by the client. In that opinion, the Council also discussed any other relationships between attorneys beyond the same nuclear family. Council opined that:

Attorneys who share the same household, or who have other highly intimate relationships, whether social, personal, political, business or otherwise, which might be perceived as an interest which adversely affects the independent representation of the client, must reveal such relationship or interest and obtain the consent of their clients before proceeding with the representation.

In addition, LE Op. 190 provides that disclosure of personal interests must be full and adequate under the circumstances and the consent of the client must continue throughout the representation. Thus, the emphasis is not on the type of relationship that exists, but on [the] nature of the relationship and the impact, real or apparent, that interest has upon the client and his/ her right to proper representation."

Thus, this Committee would opine that both attorneys must disclose to their respective clients the nature of the concurrent relationship with opposing counsel and the fact that the concurrent relationship with opposing counsel and whether such professional relationship will affect the exercise of his/her independent professional judgment on behalf of the client. Only after disclosure is made and the client has given his/her informed consent may the attorney accept employment or, in this case, continue the representation pursuant to DR:5-101(A).

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