

Committee Opinion
January 4, 1990
Reconsidered and Superseded
May 8, 1990

LEGAL ETHICS OPINION 1312

CONFLICT OF INTERESTS –
PERSONAL INJURY: REPRESENTING
DEFENDANT AND HOSPITAL WHERE
PLAINTIFF HAD BEEN TREATED
EARLIER; ADVISING HOSPITAL
REGARDING CERTAIN MEDICAL
RECORDS OF PLAINTIFF.

This response supersedes the Committee's opinion dated January 4, 1990. You have asked the Committee to opine as to whether Defendants' counsel may continue representing the Defendants in a personal injury matter under the following facts.

You have advised that counsel for the Defendants in a personal injury matter is also retained counsel for the hospital where the Plaintiff in the litigation had earlier received treatment for unrelated matters. Where Plaintiff was injured in a fall while in the hospital during that earlier stay and where Defendants' counsel, in his capacity as the hospital's retained counsel, advised the hospital not to release certain medical records involving the fall because he contends that such internal information need not be produced in response to Plaintiff's counsel's request and the Plaintiff's executed medical authorization, you inquire if it is ethically permissible for Defendants' counsel to continue the representation of Defendants in the personal injury matter after advising the hospital in the matter involving the fall.

The appropriate and controlling rules relative to your inquiry are DR:5-105(B) and (C). Disciplinary Rule 5-105(B) provides that a lawyer may 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. However, DR:5-105(C) permits the lawyer to represent multiple clients if (1) it is obvious that he can adequately represent the interests of each and (2) each client consents to the representation after full disclosure of the possible effect such representation would have on the exercise of his independent professional judgment on behalf of each.

Based upon your clarification and the additional facts provided in your January 21, 1990 letter, wherein you indicate that there is no possibility as to the hospital being named a third party defendant since the injuries stem from unrelated incidents, the Committee is of the opinion that it would not be improper for Defendants' counsel to represent both the Defendants and the hospital if counsel received consent from both after full disclosure of the possible effect of such representation on the exercise of his independent professional judgment on behalf of each. Lacking such consent, the Committee is of the opinion that it would be necessary for Defendants' counsel to withdraw from representing either the Defendants or the hospital.

The issue of whether the hospital was required to furnish certain records as to Plaintiff's fall at the hospital is a legal question beyond the purview of this Committee.

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Editor's Note. – Legal Ethics Opinion No. 1312, dated May 8, 1990, provides that this opinion supersedes the Committee's opinion dated January 4, 1990.