

LEGAL ETHICS OPINION 1377

CONFLICT OF INTEREST – MULTIPLE  
REPRESENTATION: REPRESENTING  
ONE CO-DEFENDANT AFTER  
OBTAINING ADVERSE INFORMATION  
FROM OTHER DEFENDANT.

You have advised that Attorney was retained by the insurer of Trucking Company and its employee, Driver, in an accident case which resulted in a wrongful death suit including a count for negligent entrustment of the vehicle by Trucking Company to Driver. You have indicated that after Attorney filed Grounds of Defense on behalf of both Trucking Company and Driver, the Attorney learned of a number of traffic violations prior to the instant accident which Driver contends she reported to her employer, Trucking Company. However, Trucking Company denied that most of the violations had been reported by Driver. You have stated that Attorney withdrew as counsel for Driver and has continued to represent Trucking Company.

You have asked the Committee to opine as to the propriety of Attorney continuing the representation of Trucking Company in light of his former representation of Driver.

The appropriate and controlling Disciplinary Rules relative to your inquiry are DR:4-101(B), regarding preservation of client's confidences and secrets, and DR:5-105(D), regarding representation of one client impairing professional judgment on behalf of another client. Disciplinary Rule 4-101(B) provides that, barring the circumstances enumerated in DR:4-101(C) and (D), a lawyer shall not knowingly reveal a confidence or secret of his client; and shall not use a confidence or secret of his client to the disadvantage of the client or his own or a third person's advantage, unless the client consents. Disciplinary Rule 5-105(D) provides that a lawyer shall not represent a new client in a matter that is the same or substantially related matter to that of a former client if the interest of the new client is adverse in any material respect to the interest of the former client unless the former client consents after disclosure.

The Committee has previously opined that it is improper for an attorney to continue to represent either Client A or Client B in a matter once they became adverse to each other, and, as such, the attorney must withdraw from representing both clients. (See LE Op. 371.) Prior LE Op. 441 also found that the mere fact that a lawyer had formerly represented a person who is now the adverse party in a suit brought by the lawyer on behalf of another client, did not warrant the lawyer's disqualification on ethical grounds. However, a violation of DR:4-101(B) could result if the lawyer possessed confidential information which he had obtained from his first client.

Since, as you have stated in the facts of the inquiry, the underlying basis of the suit includes a charge of negligent entrustment of the vehicle by client/Trucking Company to former client/Driver, it appears to the Committee that the issue of whether the Trucking Company knew of Driver's prior traffic violations is a central issue to the defense of the wrongful death action against Trucking Company. The Committee believes that given the conflicting interests between the former and current client, the Attorney may not continue the representation of Trucking Company unless he has obtained the informed consent of former client/Driver after full disclosure of the effect on the exercise of his professional

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judgment on behalf of the adverse client and provided that the attorney has not gained any information that could be construed to be a confidence or secret from Driver which could result in a violation of DR:4-101(B).

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