

LEGAL ETHICS OPINION 1444

CONFLICT OF INTEREST — FORMER
CLIENT — PERSONAL INTEREST
AFFECTING REPRESENTATION —
BANKRUPTCY REPRESENTATION:
ATTORNEY, ALSO CREDITOR,
REPRESENTING CURRENT CLIENT
AGAINST FORMER CLIENT.

An attorney was retained by an architect (A), as agent of the architectural firm (B) for which A works, to represent B in a dispute with D regarding fees for services rendered by B to D. Services rendered by B to D consisted of site plan and building renovation plans for a parcel of land in jurisdiction X. The dispute was resolved ultimately without litigation.

Subsequently, Attorney was retained by A to represent A and B in defending against a mechanic's lien filed by a subcontractor (C) on A's personal residence. That dispute was compromised and settled.

Following both representations, both A and B failed to pay full amounts for services rendered by Attorney. A and B notified Attorney that other counsel had been retained to handle their affairs.

Attorney was later notified that A and B failed to perform as required by the settlement agreement with C. Attorney declined to represent A and B in subsequent negotiations with C's counsel because of the potential that Attorney would be a witness adverse to A's and B's interests in any litigation to enforce the settlement agreement.

Attorney has indicated that he acquired no secrets or confidential information about either A or B, A's qualifications, or A's and B's internal business procedures and operations.

Attorney was subsequently retained by E to assist in acquiring approval of a site plan in jurisdiction Y. The site plan was prepared by A, working for B, based upon a contract between E and B. Attorney was not involved in negotiating the contract, or with the site plan, prior to its submittal to jurisdiction Y. The site plan was rejected by jurisdiction Y for technical reasons, following which E instructed Attorney to terminate the contract between E and B because E stated that: (1) E had learned that A had misrepresented his credentials and skills to E prior to E and B entering into the contract; and (2) E had further learned that A had used his position with B to divert money paid by E to B to pay personal obligations of A rather than to pay an engineering firm (F) for work done on the site plan. B and F have filed mechanic's liens against E's property.

Several months later, A and B filed for Chapter 11 bankruptcy, listing attorney as creditor. The following month, B filed a bill of complaint to enforce its mechanic's lien against E.

Committee Opinion
January 6, 1992

The Committee has been asked to opine whether, under the facts of the inquiry, (1) Attorney may represent E in defending against mechanic's liens filed by B and F in circuit court, and (2) Attorney may represent E against A and B in bankruptcy court to contest the discharge of monies owed to E, where Attorney is not contesting the discharge of amounts owed him by A and B.

As to the question regarding whether Attorney can properly represent E in defending against the mechanic's liens filed by B and F, assuming the matters are not related and no secrets or confidences were obtained by Attorney, the Committee is of the opinion that there is no *per se* impropriety in Attorney's continued representation of E against B and F in the mechanic's lien suit.

As to the second question, regarding whether or not Attorney can represent E against A and B in bankruptcy proceedings, the Committee believes that Attorney would have a personal conflict, as described under DR:5-101(A), because E's claim as potential creditor in bankruptcy, if proven, would have priority over Attorney's claim as creditor. However, assuming no secrets or confidences were obtained by Attorney from A and B, the Committee opines that it would not be improper or violative of DR:5-101(A) for Attorney to represent E in the bankruptcy proceeding, provided that he had first obtained the consent of E after full and adequate disclosure under the circumstances. [DR:4-101(B), DR:5-101(A), DR:5-105(D); LE Op. 284, LE Op. 441, LE Op. 622, LE Op. 672, LE Op. 933, LE Op. 1194, LE Op. 1399.]