

Committee Opinion  
May 11, 1993

LEGAL ETHICS OPINION 1523

CONFLICT OF INTEREST - PERSONAL  
INTEREST AFFECTING  
REPRESENTATION - LIMITATION ON  
EXTENT OF REPRESENTATION AND  
ATTORNEY'S PERSONAL  
RELATIONSHIP WITH OPPOSING  
PARTY.

You have presented a hypothetical situation in which Plaintiff and Defendant have been, and still are, long-time friends. Plaintiff was significantly injured by Defendant's dog while Plaintiff was tending the animal during Defendant's vacation. Defendant reported the occurrence to the homeowner's insurance carrier. The carrier's policy is sufficient to adequately compensate Plaintiff based on known facts.

You indicate further that Plaintiff does not wish to sue Defendant and desires to retain Attorney, with the understanding that all efforts will first be exhausted towards amicable resolution without instituting suit. Attorney has disclosed to Plaintiff that Defendant lives in Attorney's neighborhood, that the two are casual acquaintances, and that Attorney would withdraw from the case (absent prejudice to Plaintiff) in the event litigation became necessary to resolve the case to Plaintiff's satisfaction. Plaintiff, after learning these disclosures, still seeks to retain Attorney on a contingent fee basis.

You have asked the committee to opine whether, under the facts of the inquiry, Attorney may undertake representation of Plaintiff.

As you have indicated, the appropriate and controlling Disciplinary Rules related to your inquiry are DR:5-101(A) which requires that a lawyer shall not accept employment if the exercise of his 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; and DR:7-101(B)(1) which provides that a lawyer may, with the express or implied authority of his client, exercise his professional judgment to limit or vary his client's objectives and waive or fail to assert a right or position of his client.

The committee believes that the attorney's casual relationship with Defendant constitutes a personal interest affecting representation as articulated under DR:5-101(A). However, the committee recognizes that the impact of such personal interests may be measured along a continuum, with the least significant interests representing only a de minimis conflict which does not require disclosure to or consent from the client. See LE Op. 1465.

The committee also opines that it is not improper, under DR:7-101(B)(1), for Attorney to limit representation to nonlitigation measures since Attorney has disclosed, and client has consented to such limitation. See LE Op. 1264.