

Committee Opinion
June 22, 1993

LEGAL ETHICS OPINION 1536

CONFLICT OF INTEREST -
CONFIDENCES AND SECRETS –
FORMER CLIENT: ATTORNEY'S
FORMER FIRM REPRESENTS
DEFENDANT IN PERSONAL INJURY
CASE; ATTORNEY'S SPOUSE
EMPLOYED BY INSURANCE CARRIER.

I am writing in response to your letter dated April 26, 1993, requesting an informal advisory opinion from the Virginia State Bar Standing Committee on Legal Ethics ("committee").

You have presented a hypothetical situation in which Attorney A was previously employed by Law Firm B and handled insurance defense cases and coverage issues for Law Firm's client, Insurance Company C. Attorney A later left Law Firm B and started his own law practice.

You indicate that Attorney A is now representing Client D in a personal injury action against a defendant who is insured by Insurance Company C. Law Firm B is defending the case.

You advise that Attorney A is familiar with the operation of Insurance Company C, not only because of his past employment with Law Firm B but also because his wife was, and is currently, a supervisor-employee of Insurance Company C with access to all claim files involving the same claim of Client D that is the subject matter of the personal injury action. Attorney A's spouse also has access to other claim files and information regarding the defendant, who is the insured of Insurance Company C. This information would include past claims, accident reports, and past repair estimates, as well as information and opinions supplied by Law Firm B on the merits of all claims handled by that firm, including the defense of the personal injury action in question.

You have asked the committee to opine whether, under the facts of the inquiry, (1) Attorney A may continue representation of Client D since he formerly represented Insurance Company C while employed by Law Firm B; and (2) whether Attorney A may continue to represent Client D, considering Attorney A's spouse's employment by Insurance Company C.

The appropriate and controlling Disciplinary Rules related to your inquiry are DR:4-101(B) which provides that a lawyer shall not knowingly use or reveal a confidence or secret of his client; and DR:5-105(D) which states that a lawyer who has represented a client in a matter shall not thereafter represent another person in the same or substantially related matter if the interest of that person is adverse in any material respect to the interest of the former client unless the former client consents after disclosure.

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The committee directs your attention to prior LE Op. 598, approved by the Virginia Supreme Court effective June 1, 1985, which concluded that "the client of an insurance carrier's [in-house] employee attorney is the insured, not the insurance carrier". The committee is of the view that such delineation of the client is equally applicable when the insurance company engages outside counsel to represent its insured. The committee is of the opinion that Attorney A's familiarity with the general operation of Insurance Company C does not constitute a confidence or secret as envisioned by DR:4-101 since there was no attorney-client relationship between Attorney A and Insurance Company C. Thus, the committee opines that, unless the current matter is the same or substantially related to specific matters in which Attorney A, while employed by Law Firm B, previously represented other insureds who are now adverse to Client D, there is no impropriety in Attorney A continuing to represent Client D.

As to your inquiry regarding A's spouse who, as employee of Insurance Company C, has access to all claim files involving both D's current claim and other claim files and information regarding the defendant, the committee opines that, assuming Attorney A had no knowledge of information his spouse may have learned as an employee of C, A would not be precluded from continuing his representation of D. See LE Op. 1481.