

CONFIDENCES AND SECRETS —  
FORMER CLIENT — CONFLICT OF  
INTEREST: LAW FIRM REPRESENTING  
ADMINISTRATOR OF DECEDENT'S  
ESTATE AFTER HAVING  
REPRESENTED ADMINISTRATOR IN  
HER INDIVIDUAL CAPACITY.

You have presented a hypothetical situation in which Husband and Wife, driving together, are involved in an automobile accident with a third party. Husband is killed as a result of the accident. Law Firm represents Wife in a claim against Husband's estate for injuries she received in the accident. Wife has no memory of the accident and can offer no testimony as to the negligence of any party. The driver of the second vehicle asserts that the accident was due to Husband's negligence. Wife's counsel is aware that a certain witness to the accident exists but is unable, through use of its investigator, to locate the witness. Having no other evidence, it is determined that the accident was due to Husband's negligence. The claim is settled without suit being filed, and Wife recovers \$18,000 from Husband's insurance company. As part of the settlement, Wife releases the estate from any further liability.

You further indicate that, approximately one year after Wife settles her individual claim for injuries sustained in the accident, through a series of events, Wife meets the witness for whom the investigator had searched. The witness can testify as to the fact that the accident was caused solely by the negligence of the third party.

Wife qualifies as administratrix of Husband's estate and seeks to have Law Firm represent her, in her capacity as administratrix, against the third party.

Finally, you indicate that opposing Counsel wishes to disqualify Law Firm and Wife from taking part in the claim on the ground that such action violates Canons 4, 5, and 9 of the Code of Professional Responsibility. Law Firm contends that Wife's settlement in her individual capacity for her own personal injuries is not binding on the estate, that there is no confidential information at stake, that it is not taking inconsistent positions, and that, as a result, disqualification is inappropriate.

You have asked the committee to opine whether, under the facts of the inquiry, Law Firm's representation of Wife, in her capacity as administratrix, presents a conflict of interest under Canons 4, 5, or 9 under the Code of Professional Responsibility.

The appropriate and controlling Disciplinary Rules related to your inquiry are DR:4-101(B) which provides that a lawyer shall not knowingly reveal a confidence or secret of his client; use a confidence or secret of his client to the disadvantage of the client; or use a confidence or secret of his client for the advantage of himself or a third person, unless the client consents after full disclosure; and Disciplinary Rule 5-105(D) [DR:5-105] which provides 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

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person is adverse in any material respect to the interest of the former client unless the former client consents after disclosure. The provisions of Canon 9 are inapplicable here since the facts do not indicate representation by a former government lawyer or judge, statements of ability to influence a public official, or trust account concerns.

The Committee is of the opinion that Law Firm's representation of Wife, in her capacity as administratrix, is not violative of either Canon 4 or Canon 5 since Wife is in a position to waive any conflict both as administratrix of the estate and on her own behalf. Since she has consented, the Committee opines that there is no impropriety in the representation. *See* LE Op. 1452.

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