

LEGAL ETHICS OPINION 1609

CONFLICT OF INTEREST - MULTIPLE
CLIENTS: SIMULTANEOUSLY
REPRESENTING CLIENT/PROPERTY
OWNER AND CLIENT/POTENTIAL
PURCHASER/CREDITOR OF THIRD
PARTY.

You have presented a hypothetical situation in which a law firm is defending client B in pending litigation, attempting to prevent Plaintiff in the proceeding from imposing a lien on property (the "Property") in which B has an interest. You indicate that the Property is for sale, has been for some time and Client B desires the Property be sold. If a sale occurs, there will be funds to pay Plaintiff, as well as a significant benefit to client B.

You advise that the law firm received from counsel representing a co-defendant in the litigation a proposed letter of intent to enter into a contract for the purchase of the property, submitted by Mr. X.

Finally, you indicate that Mr. X is a judgment debtor of A who is a client of the law firm. In fact, the law firm represented client A in obtaining judgments against Mr. X, which judgments are substantial and remain outstanding. Within the preceding three months, the law firm has undertaken activities toward collecting the judgment against Mr. X.

You have asked the committee to opine, under the facts of the inquiry, as to several issues related to the representations of clients B and A.

The appropriate and controlling Disciplinary Rules related to your inquiry are DR:4-101(B) which provides for the preservation of client confidences and secrets; DR:4-101(C)(4) which states that a lawyer may reveal confidences or secrets necessary to establish the reasonableness of his fee or to defend himself or his employees or associates against an accusation of wrongful conduct; and DR:5-105(B) which states that a lawyer shall not continue multiple employment if the exercise of his independent professional judgment will be or is likely to be adversely affected by his representation of another client, except to the extent permitted under DR:5-105(C).

1. As to whether the law firm must withdraw from representing both clients, assuming that X will be applying assets to the purchase of the property which assets could be used to satisfy the claim of B, the committee is of the opinion that client A and client B have conflicting interests which can neither be reconciled nor cured by consent. Thus, the committee opines that the firm may not continue to represent B in the pending litigation and A as to collection of the judgment against X, potential buyer of the property involved in B's litigation. Since the conflict has matured, the committee is of the view that the law firm must withdraw from both representations. See LE Op. 1457.

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2. As to whether the law firm is prohibited from telling client B about client A's judgments against Mr. X, the committee opines that the law firm may not disclose to client B any information regarding client A's judgments against Mr. X. Under DR:4-101(B), information regarding the judgments, even though available in the public record, is a secret, learned within the attorney-client relationship, and the disclosure of such information would likely be detrimental to client A. Thus, the information must be protected by the law firm.

3. As to whether the law firm is prohibited from telling client A about the proposal submitted by Mr. X for the purchase of the Property, the committee opines that the law firm may not disclose to client A any information regarding the proposal submitted by Mr. X for the property. As above, information regarding the proposal related to B's litigation is confidential, learned within the attorney-client relationship, and the disclosure of such information would be detrimental to client B. Thus, the information must similarly be protected by the law firm.

4. As to whether the law firm is prohibited from revealing to either client any specifics with regard to the conflict, the committee opines that the law firm may not reveal specifics to either client with regard to the nature of the conflict. The disclosure of such specific information would be a breach of client confidentiality and violative of DR:4-101(B). Thus, the law firm may only tell each client that there is an irreconcilable conflict which will not permit the law firm to continue either representation.

5. As to whether the law firm may reveal the basis of the conflict as part of its defense if client B files a claim against the law firm, the committee believes that such disclosure would be permissible as part of its defense under the precepts of DR:4-101(C)(4), the firm may reveal confidences or secrets necessary to defend itself against an accusation of wrongful conduct. The committee cautions, however, that disclosure should be made only to the extent necessary to rebut any accusation by client B of the firm's wrongful conduct. See LE Op. 1433.

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