

LEGAL ETHICS OPINION 1610

CONFLICT OF INTEREST – MULTIPLE
CLIENTS: REPRESENTATION OF
PARTNERSHIP AND ANOTHER CLIENT
SUING ONE PARTNER OF THE
PARTNERSHIP IN AN UNRELATED
MATTER.

You have presented a hypothetical situation in which a law firm represents a joint venture, client B, formed in the mid-1980's to bid on more than \$600 million worth of work related to a specific construction project out of state. Client B is comprised of Client A, Client C, and Client D. The law firm does not represent them individually. It represents the joint venture in which they are the co-venturers. The managing partner of the joint venture is Client C who ultimately retained the law firm to represent Client B on certain matters related to the construction.

You indicate that the law firm has never had any contact with any employees of Client A, nor does it have any familiarity with Client A's corporate structure or workings. You further indicate that there are three outstanding matters that involve Client B.

Finally, you also advise that the law firm also represents XYZ Corporation, a mechanical contracting company based in Virginia. XYZ performed certain subcontract work for Client A and a payment dispute has arisen between XYZ and Client A that may require the filing of a lawsuit. You advise that XYZ wants the law firm to represent it in that lawsuit.

You have asked the committee to opine, under the facts of the inquiry, (1) whether a law firm can ethically represent a client in a lawsuit against a company that is a partner in a joint venture already represented by the law firm; and (2) whether the prohibition against suing an existing client is present here since the law firm's representation of Client A is so attenuated.

The appropriate and controlling Disciplinary Rule related to your inquiry is DR:5-105(A), which dictates that a lawyer must refuse to accept employment, except as permitted by DR:5-105(C), if the interests of another client may impair the independent professional judgment of the lawyer.

Disciplinary Rule 5-105 addresses the concurrent representation of two or more clients. LE Op. 1168 points up that members of an entity client may not be clients themselves (individual homeowners' association members were not clients of lawyer representing association). LE Op. 1458 adopted the entity-representation rationale with respect to partnerships. Accord, ABA Formal Op. 91-361 (1991). The facts presented suggest that the joint venture is an entity distinct from the individual members. The committee is of the view that the facts presented do not indicate that the law firm has ever represented Client A individually, has had any contact with employees of Client A or any familiarity with the corporate structure of Client A, and has not acquired confidences or secrets from Client A.

Committee Opinion
September 14, 1994

Therefore, based on the apparent lack of any attorney-client relationship between the law firm and Client A, the committee opines that it would not be improper for the law firm to represent XYZ in its dispute with Client A.

Having found that no attorney-client relationship exists between the law firm and Client A, the committee thus opines that any prohibition against suing an existing client is inapposite to the facts presented.