

LEGAL ETHICS OPINION 1612

CONFLICT OF INTEREST - PERSONAL
INTEREST AFFECTING
REPRESENTATION: ATTORNEY
REPRESENTING PERSONAL INJURY
CLIENTS WHEN DEFENDANT IS
INSURED BY A CARRIER FOR WHOM
ATTORNEY ALSO SELLS AUTO
INSURANCE POLICIES.

You have presented a hypothetical situation in which an attorney desires to open a business as an independent insurance agent. A personal injury client has been referred to him. The client was injured by a person who is insured by an insurance company for whom the attorney has sold automobile insurance policies to other persons on behalf of the company.

You have asked the committee to opine, under the facts of the inquiry, (1) whether there is a conflict of interest in representing a client in a personal injury claim against a defendant insured by a carrier for whom the attorney has written policies; (2) whether there is a conflict of interest in representing a client in a personal injury claim against a defendant insured by a carrier for whom a corporation/insurance agency in which the attorney has an ownership interest has written policies and, (3) whether the answer to #1 and #2 would be different if the attorney or the corporation/insurance agency had written the policy for the defendant insured.

The appropriate and controlling Disciplinary Rule related to your inquiry is DR:5-101(A), which provides that, except with the consent of his client after full and adequate disclosure under the circumstances, a lawyer shall not accept employment where the exercise of the lawyer's professional judgment on behalf of his client may be affected by the lawyer's own financial, business, property, or personal interests.

The committee reiterates its prior opinion that, with full disclosure and informed consent of a personal injury client, it would not be improper for the attorney to simultaneously represent the client and engage in the related entrepreneurial activity of selling insurance policies. See LE Op. 1311.

The committee also opines that it would not be improper for the attorney to represent a client against a liability insurance company (or its insured) for which the attorney, or a corporation/insurance agency in which the attorney has an ownership interest, has written policies. The committee further opines that the representation would not be improper, even if the attorney or corporation/insurance agency had written the policy for the defendant insured. The committee reiterates, however, that the attorney must make the requisite disclosure to, and receive consent from, the personal injury client under DR:5-101(A). The attorney's disclosure must be such that his client is able to make an informed decision. See LE Op. 187.