

Committee Opinion
February 17, 1995

LEGAL ETHICS OPINION 1623

CONFLICT OF INTEREST; FORMER
CLIENT AS WITNESS IN CASE
INVOLVING PRESENT CLIENT, LEGAL
AID SOCIETIES.

You have presented a hypothetical situation in which Client #1 requested that Attorney represent her in an eviction case based partially on an incident which allegedly occurred between her son and the son of a neighbor. You indicate that Client #2 requested representation immediately thereafter in an eviction case related to nonpayment of charges. Client #1 recognized Client #2 in the hallway [of the law office] and notified Attorney that Client #2 is the neighbor whose son was allegedly involved in the incident with her son.

You further indicate that it is possible that Client #2 may be called as a witness in the eviction case of Client #1, but that there is no connection between the clients relating to the eviction of Client #2. You advise that there are no direct conflicts between the interests of the clients, or information in one case that would affect the lawyer's impartiality or ability to offer undivided loyalty. However, you state that there may be an appearance of conflict between the clients based on the fact that Client #2 may testify against the interests of Client #1.

You indicate that both clients live in federally subsidized housing and that there are very few, if any, pro bono attorneys available where these clients live who have the necessary expertise or would be willing to represent these clients. Finally, you indicate that, if Attorney, on the staff of a legal services agency, cannot represent these clients, it is likely that they will go unrepresented.

You have asked the committee to opine, under the facts of the inquiry, (1) whether Attorney may represent either or both parties; and (2) whether disclosure would be sufficient to satisfy any potential questions about the attorney's loyalty to clients.

The appropriate and controlling Disciplinary Rule related to your inquiry is DR:5-105(C), which states that a lawyer may represent multiple clients if it is obvious that he can adequately represent the interest of each and if each consents to the representation after full disclosure of the possible effect of such representation on the exercise of his independent professional judgment on behalf of each.

The committee is of the opinion that it is not obvious that Attorney can adequately represent the interests of both Client #1 and Client #2. Although the facts indicate that there is no connection between the clients relating to the eviction of Client #2, the facts do indicate, however, that Client #2 may be called as a witness in the eviction of Client #1. In order to provide zealous representation to Client #1, therefore, Attorney would be obligated to challenge the credibility of Client #2 in Client #1's action while continuing to represent Client #2 on the unrelated matter. Thus, the committee is of the opinion that withdraw from representation of Client #1. However, assuming that Client

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#1 has no involvement in the eviction case of Client #2, the committee is of the opinion that it would not be improper for Attorney to continue representation of Client #2. See LE Op. 1408, LE Op. 1150, LE Op. 706.