

You have presented a hypothetical situation involving Attorney M, who entered law practice in September 1991 as an associate with Law Firm A. Because he is also a physician, Attorney M worked almost exclusively on defense of medical malpractice cases. You indicate that, along with the partner in charge of the medical malpractice section, Attorney M was an attorney of record in about twenty-five cases and peripherally involved in about twenty-five other cases handed by Law Firm A. Attorney M had no involvement in about one hundred other cases.

You advise that, from February 1993 until October 1993, Attorney M was employed as a claims consultant for Insurance Company X as an administrator and manager who assigned medical malpractice cases to defense attorneys and followed the cases' progress. Although Attorney M was familiar with the facts of the cases, he was rarely privy to conversations between the doctors and the defense attorneys. Attorney M did not practice law during that period, and there was no attorney-client relationship between Attorney M and the doctors or Insurance Company X.

You indicate that Attorney M was paid a fixed salary by Insurance Company X, did not carry legal malpractice insurance during his employment by Insurance Company X, and was instructed by his supervisor that his responsibilities were the same as the other claims employees who did not have a law degree and that he was not to practice law.

In November 1993, Attorney M returned to the practice of law with Law Firm A as a senior attorney and functioned as a consultant in medical/legal issues. You indicate that M's duties included medical/legal research, advice on specific issues in cases, occasional doctor/defendant interviews, occasional depositions of plaintiff expert witnesses, and securing defense expert witnesses. In this consultant capacity, M was not an attorney of record in any current cases defended by Law Firm A and was not an attorney of record in any case since February 1993.

You indicate that, in January 1995, Attorney M will join Law Firm B as a plaintiff's attorney and expects to bring suits against doctors and hospitals for medical malpractice. Attorney M will only be involved in medical malpractice cases; there are no medical malpractice cases being handled by Firm B at this time. Finally, Firm B does not have any active medical malpractice cases against clients of Firm A.

You have asked the committee to opine, under the facts of the inquiry, as to several questions regarding Attorney M's future law practice with Law Firm B.

The appropriate and controlling Disciplinary Rules related to your inquiry are DR:4-101(B) which provides, in pertinent part, for the preservation of client confidences and

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secrets; and DR:5-105(D) 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 person is adverse in any material respect to the interest of the former client unless the former client consents after disclosure.

The committee opines relative to the facts presented as follows:

1. As to whether Attorney M would be precluded from representing a patient plaintiff in a medical malpractice action against a doctor, if Attorney M had been involved as an attorney, while with Law Firm A, with the defense of that doctor in a previous medical malpractice case, the committee is of the opinion that Attorney M would be so precluded from undertaking such representation. The committee believes that the representation of the plaintiff would be substantially related to the former representation of the doctor. The committee is of the view that both representations involve the same doctor whose professional competence is at issue in both suits. Further, the possession of confidential information may be imputed to Attorney M based upon his having earlier participated in the defense of the doctor in a previous malpractice action. *See* LE Op. 1568.

2. As to whether Attorney M would be prohibited from representing a patient plaintiff against a hospital, clinic, and/or professional corporation which was named as co-defendant along with the doctor, if Attorney M was involved in the defense of the doctor and hospital, clinic and/or professional corporation, the committee is of the opinion that Attorney M would likewise be precluded from such representation for the reasons stated above.

3. The committee is of the view that it would not be improper, under DR:4-101(B), for Attorney M to represent a patient plaintiff against a doctor who had been earlier represented by Law Firm A while Attorney M was associated with the Firm, provided that Attorney M did not work on the doctor's defense and did not receive any confidential information from the doctor.

4. Since the facts indicate that Attorney M managed and administered claims for Insurance Company X, but was specifically instructed not to practice law, the committee believes that no attorney-client relationships were established between M and the insured doctors whose claims he handled. Thus, the committee is of the opinion that, since no such relationship arose between M and the doctors, the doctors' claim information would not constitute a confidence or secret under DR:4-101. *See* LE Op. 1536. Therefore, the committee opines that Attorney M would not be prohibited from representing a patient plaintiff against a doctor whose claim was managed and administered by M while he was employed by Insurance Company X.

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