

LEGAL ETHICS OPINION 1631

CONFLICTS; CONFIDENCES;  
CONTINUED REPRESENTATION OF  
DIVORCE CLIENT AFTER CLIENT  
FILES BANKRUPTCY LISTING  
ATTORNEY AS UNSECURED  
CREDITOR ALTHOUGH CLIENT'S  
PARENTS ARE PAYING LEGAL FEES;  
WITHDRAWAL OF REPRESENTATION.

You have presented a hypothetical situation in which Lawyer is approached by the parents of a serviceman to represent their son in a domestic relations matter, i.e., prosecuting a divorce action. You indicate that the parents signed a retainer agreement with Lawyer agreeing to pay the firm for legal services and expenses in representing their son in matters related to the pending divorce action. The parents have continued to pay the firm on a regular basis in response to billings and show no signs of dissatisfaction with the firm's services. No court papers have yet been filed with respect to the divorce action.

You further indicate that Lawyer has been providing continuing services on behalf of the son, such as preparing a draft separation agreement, attending a custody hearing, and corresponding with counsel for the serviceman's wife on various matters including support. The serviceman and his wife have been separated for over one year.

You advise that since the son is a poor correspondent, most if not all of the information being received by Lawyer concerning the relations between the son and his estranged wife comes from the parents.

Finally, you indicate that Lawyer received notice that the son has filed a voluntary petition in bankruptcy (Chapter 7) in the State of Colorado. The petition lists Lawyer personally as an unsecured creditor and states that the son makes monthly payments to Lawyer on his account, despite the fact that he personally has never paid Lawyer or Lawyer's firm any amount. All payments received by Lawyer or Lawyer's firm were from the parents without any indication that the son was the one actually making the payments.

You have asked the committee to opine whether, under the facts of the inquiry, Lawyer must withdraw as counsel for the son in his divorce proceeding in view of his bankruptcy filing.

The appropriate and controlling disciplinary rules relative to your inquiry are DR:5-106(A and B) which provide respectively, in pertinent part, that, except with the consent of his client, a lawyer shall not accept compensation for his legal services from one other than his client and shall not permit a person who pays him to render legal services for another to direct or regulate his professional judgment in rendering such services; DR:6-101(C) which requires that a lawyer keep his client reasonably informed about matters in which the lawyer's services are being rendered; DR:5-101(A) which precludes a lawyer

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from accepting employment if the exercise of his professional judgment on behalf of his client may be affected by his own financial, business, property, or personal interests, except with the consent of his client; DR:2-108(B) which permits a lawyer to withdraw from representation of a client under certain circumstances; and DR:2-108(D) which describes steps to be taken upon termination of representation. Further guidance is available in Ethical Considerations 5-21 [ EC:5-21], 5-22 [ EC:5-22] and 5-23 [ EC:5-23], all of which emphasize the need for a lawyer's judgment to be impervious to influence by a third party who compensates a lawyer for the provision of services to his client.

The committee has previously opined that where an intermediary or third party has hired an attorney to provide legal services for another who is the attorney's client, the attorney has the obligation to provide zealous representation, exercise independent professional judgment, and preserve the confidences and secrets of that client. See LE Op. 1374, LE Op. 1276, LE Op. 609.

In the facts you present, the committee believes it is clear that the client to whom the Lawyer owes the duties of loyalty and confidentiality is the son, irrespective of the fact that the parents have agreed to pay the firm for legal services. For purposes of this opinion, the committee assumes that the requirements of DR:5-106(A) have been met and that the client has consented to payment of his legal fees by his parents. DR:5-106(A) and (B). The committee is also of the opinion that it is incumbent upon the Lawyer to attempt to communicate directly with the client or with the Colorado attorney representing the client in the bankruptcy matter. Such communication should be made for the purposes of (1) securing appropriate information relative to Lawyer's representation of client in the domestic relations matter and (2) ascertaining the facts underlying the listing of lawyer as an unsecured creditor on the client's bankruptcy petition. DR:6-101(C).

The committee is further of the opinion that, although DR:5-101(A), precluding a lawyer's acceptance of employment if his professional judgment on behalf of the client may be affected by his own personal interests, would be applicable at the outset of representation, it is inapposite to the circumstances you describe which involve an already-existing attorney-client relationship. Thus the committee is of the view that no cause exists for Lawyer's mandatory withdrawal from representation of client. However, the committee opines that withdrawal would be permissible if Lawyer is able to establish that one or more of the circumstances described in DR:2-108(B) has arisen, i.e., (1) withdrawal can be effected without material prejudice to the client; (2) the client persists in a course of conduct involving lawyer's services that the lawyer reasonably believes is illegal or unjust; (3) the client continually fails to fulfill an obligation to the lawyer regarding the lawyer's services; or (4) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client.

Finally, the committee opines that, should Lawyer conclude that withdrawal may be effected, Lawyer must comply with the dictates of DR:2-108(D) which require that reasonable steps be taken for the continued protection of client's interests, including

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giving reasonable notice to the client, allowing time for employment of other counsel, delivering all papers and property to which the client is entitled, and refunding any advance payment of fee that has not been earned.