

Committee Opinion
February 22, 1995

LEGAL ETHICS OPINION 1634

ATTORNEY/CLIENT RELATIONSHIP;
ATTORNEY/CPA REPRESENTING
CLIENT IN IRS MATTER AFTER
HAVING PROVIDED ONLY
ACCOUNTING SERVICES TO CLIENT.

You have presented a hypothetical situation in which Client approaches Attorney to represent him in a matter concerning his 1991 federal tax return which had been filed as a Married, Filing Separate return which did not involve his former spouse. You indicate that the return in question was prepared by an accounting firm in which Attorney is also a principal in his capacity as a certified public accountant. The accounting firm had prepared previous returns for Client and his spouse until such time as they separated due to marital difficulties. Subsequent to the separation, Client and his spouse filed separate returns as married taxpayers filing separately and thereafter, subsequent to their divorce, as single taxpayers.

Furthermore, you indicate that, throughout the period of the representation, Client was represented by Attorney solely in his capacity as a certified public accountant. With the exception of one legal matter which has been handled for Client, which is unrelated to the tax returns of either Client and/or his former spouse, all representation of Client has been handled as a certified public accountant.

You advise that the Internal Revenue Service has proposed an adjustment to Client's 1991 return which does not involve any facts or circumstances relevant to Client's former spouse. However, an adjustment in Client's 1991 return would result in a reduction of a net operating loss which was carried back to the 1988 return. The 1988 return was filed jointly between Client and his former spouse. Client, via attorney in his accounting firm, has filed an appropriate protest with the Internal Revenue Service. The Service, acting pursuant to its normal administrative procedures has opened an administrative appeal on the matter and a hearing with an appropriate appeals officer of the Service is pending.

Finally, you indicate that Client has instructed Attorney to minimize the adjustment to the return or, in the alternative, to pursue additional remedies in either the U.S. Tax Court or the Federal District Court if such action becomes necessary and is deemed by Client to have some reasonable possibility of a successful outcome. In the event that all available means do not result in a reversal of the proposed adjustment, Client has indicated that he has the means to pay all applicable taxes and intends to pay the taxes if the proposed adjustment by the Service is upheld.

Under the facts you have presented, you have asked the committee to opine as to the propriety of Attorney representing Client in a matter before the Internal Revenue Service pertaining to his 1991 separate return where there is a potential effect on the 1988 joint return filed by Client and his former spouse.

The appropriate and controlling disciplinary rule relative to your inquiry is DR:5-105(D) which prohibits a lawyer who has represented a client in a matter from

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subsequently representing another person in the same or substantially related matter if the interest of the second person is adverse in any material respect to that of the former client without the former client's consent after disclosure.

In the facts you present, the committee is of the opinion that Attorney is responsive to the Code of Professional Responsibility when functioning in a dual capacity as an attorney and an accountant. See LE Op. 1325. Thus, the committee opines that Client's former spouse holds the status of a former client of Attorney with an interest adverse to a present client of Attorney, as anticipated in DR:5-105(D). Hence, absent consent from Client's spouse/former client, the committee opines that Attorney may not continue representation of Client in the Internal Revenue Service matter which has a potential adverse effect on the former client.