

Subject: Personal interests between opposing attorneys which may preclude representation.

Conclusion: Attorneys who are members of the same “nuclear” family (husband/wife, parent/child, siblings) may not undertake representation of opposing interests. In situations where the attorneys are not members of the nuclear family but are members of the same household or have other highly intimate or close relationships which might be perceived to be an interest affecting independent representation of the client, the attorneys may proceed to represent their respective clients only after making full disclosure and obtaining the consent of the client.

Discussion: Certain of the past opinions in this area have turned substantially upon the criterion of frequency with which related attorneys may represent opposing interests. See, for example, former Formal Legal Ethics Opinions 71 and 172. Council does not believe that frequency is a reliable and proper standard.

Rather than attempt to anticipate or define the wide range of relationships, familial or otherwise, which may exist between and among attorneys, Council thinks the better approach is to analyze the nature of the “interest” created by the relationship and the impact, real or apparent, that interest has upon the clients and their rights to proper representation.

The ethical under girding for this opinion is found in DR 5-101(A) and EC 5-1 and EC 5-2 of the Virginia Code of Professional Responsibility. [Rules of Court, Part 6:§II: DR 5-101(A), EC 5-1, EC 5-2, __ Va. __, (198__).] In addressing the matter of representation by counsel, the Court has adopted considerations which compel an attorney to avoid influences limiting his independent judgment or, in the alternative, to disclose those limiting influences to his potential client. Thus DR 5-101(A) provides in part:

“A Lawyer shall not accept employment if the exercise of his professional judgment on behalf of his client may be affected by his . . . personal interests, except with the consent of his client after full and adequate disclosure under the circumstances.”

The attorney's disclosure of personal interests, of course, must be full and adequate, so that the client may give a truly informed consent.

Council is of the opinion that representation of opposing parties by attorneys who are members of the same nuclear family is per se unethical and cannot be permitted even where there is disclosure by the attorney and consent given by the client.

Beyond the area of the same nuclear family, the Council notes that there are other relationships between attorneys which must be revealed to the client prior to commencing representation. Specifically, the Council is of the opinion that attorneys who share the same household, or who have other highly intimate relationships, whether social, personal, political, business or otherwise, which might be perceived to be an interest adversely affecting the independent representation of the client, must reveal such relationship or interest and obtain the consent of their clients before proceeding with the representation. The disclosure must be full and adequate under the circumstances and the consent of the client must continue throughout the representation.

These restrictions, whether as applied to “nuclear family” or other relationships, shall apply only to the individual attorneys with the apparent conflict. The restrictions shall not be extended vicariously to other lawyers in the affected attorneys' firms, partnerships, associations, or professional corporations, assuming there has been full and adequate disclosure of any known relationship.

Approved by the Supreme Court of Virginia
January 18, 1985
Effective April 1, 1985

Legal Ethics Committee Notes. – Rule 1.8(i) now allows related lawyers to be directly adverse to one another if the clients consent.

Editor’s Notes. – Opinion 71 was rescinded and Opinion 172 withdrawn by action of Council, effective June 16, 1983.