

Committee Opinion
March 10, 1980

LEGAL ETHICS OPINION 361

CONFLICTS OF INTERESTS –
DISCLOSURE OF PRIVILEGED
COMMUNICATIONS –
DISQUALIFICATION – ATTORNEY AS
WITNESS – APPEARANCE OF
IMPROPRIETY.

Two attorneys represented two intervening defendants in a case against the United States Government. Several years later, the attorneys were asked to represent plaintiff landowners in a suit against the United States Government which arises from the matter litigated earlier. One of the intervening defendants in the earlier litigation reversed its position and is in concert with the plaintiffs in the present litigation. The Committee concluded (1) If the Government deposes the attorneys as witnesses on the defense of laches, the attorneys' testimony may be prejudicial to their clients. If it is, the attorney must withdraw from employment. [See II: DR:2-108(A)(1) and DR:5-102(B).] (2) If the attorneys are not called as witnesses, the attorneys may represent the plaintiffs so long as such representation does not require the attorneys to disclose and/or use privileged information obtained during the earlier representation. [See II: DR:4-101; EC:4-6 and DR:5-105(D).] (3) Although the attorneys had earlier represented intervening defendants in support of the position taken by the United States Government, there was no attorney/client relationship existing between the Government and the attorneys. It is, therefore, ethically permissible for the attorneys to oppose the Government even though the possibility exists for using the work product and other information disclosed to the attorneys by the Government. (4) While the attorneys' participation in the present litigation may constitute an appearance of impropriety, it is not unwarranted and there is no ethical proscription against the attorneys' participation. [See II: EC:9-2.]

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