

CONFLICTING INTERESTS

The following inquiry has been submitted to this Committee for its opinion:

"A and B were involved in an automobile accident, their automobiles having collided in an intersection. A was charged criminally with failure to yield the right of way. A's liability insurance carrier employed our firm, a partnership, to defend the criminal charge on behalf of A. This defense was handled and concluded by one member of our firm. Thereafter, A's collision insurance carrier, not the same company that had liability insurance on A's car, employed a different firm to bring suit in the name of A against B for property damage. B then came to our firm to employ us to defend the civil suit and counterclaim on behalf of B for personal injuries. This employment was accepted being unaware that another member of our firm had defended A in a criminal action arising out of the same accident.

"At this state of the proceeding, before answer to the counterclaim had been filed, we discovered that A had been defended in the prior criminal action by our firm.

"We do not believe that we obtained any information, confidential in nature, from A, in the defense of the criminal action, which could be used against A in the civil action."

The firm should withdraw as attorneys for B in the civil action.

Canon 6 forbids the subsequent acceptance of employment from others in matters adversely affecting any interest of the client with respect to which confidence has been reposed.

The rendition of professional services by an attorney to one party to a litigation which thus establishes necessarily a relation of trust and confidence, precludes the acceptance of employment by such attorney in any subsequent phase of the same litigation from the adverse party. A client is encouraged to make full disclosure of all facts to his attorney, and he should be justified in feeling that this attorney will never be found helping the other side of the litigation.

The matter is not to be determined from such facts as that the services may have had no particular bearing upon the phase of the litigation contemplated in behalf of the new employer; or that it is probable no information was acquired in the first employment that might prove useful in the subsequent employment.

To maintain public confidence in the Bar it is necessary not only to avoid actual wrong doing, but an appearance of wrong doing.

Client A might naturally feel that he has in some way been wronged when confronted by a judgment obtained by a lawyer in his behalf in an earlier part of the same litigation or a phase thereof arising from the same set of facts.

The injunction not to represent conflicting interests applies equally to law partners representing different clients who have interests conflicting one with another.

For an excellent discussion of the problem of representing conflicting interests see Drinker, Legal Ethics, at p. 103, et seq.

DATED this 12th day of July, 1962.

*See, DR 5-105 and Canon 9, Idaho Code of Professional Responsibility.