

FORMAL OPINION NO. 46*

The Ethics Committee for the Idaho State Bar has been solicited for an opinion involving the propriety of a former law clerk who was not a member of the Idaho State Bar who had investigated, in part, a matter which later came to him as a practicing attorney in a different firm, all of which is more fully set out in the accompanying letter.

We find that the American Bar Association Informal Opinion No. 906, a copy of which is attached hereto, is, in enough respects, closely related to serve as our answer to the same question proposed. Accordingly, the aforesaid opinion is adopted as our opinion.

*This is an undated opinion.

Re: Informal Opinion No. 906 2/24/66
Attorney Accepting A Case Against
Insurance Company When He Had
Previously Investigated The Same
Case As the Company's Adjuster

You present the following statement of facts:

"A young man, while a college student and while attending law school, is employed as an investigator and an adjuster of casualty claims by an insurance company. After graduating from law school, he is admitted to the Bar and becomes associated with an existing law firm. After he is admitted to the Bar, he and his law firm appear as counsel for the claimant in cases which were under investigation and adjustment while he was employed by the insurance company. Some of these are cases which were worked on by the lawyer as an investigator and adjuster while he was employed by the insurance company."

Your inquiry is whether, under those facts, there is any ethical impropriety in the lawyer or his firm continuing to represent these claimants in suits against the insurance company.

If the young man had been a licensed attorney at the time he was acting as an employed investigator and adjuster of an insurance company with respect to a matter, there would be no question that he could not ethically represent the claimant in a suit against the insurance company in connection with the same matter without the express and informed consent of the company and the claimant. Canons 6 and 37; this Committee's Formal Opinion 247, December 19, 1942. Neither could his law firm, even though he did not appear or participate in the lawsuit, as it is the Committee's position, as stated in Formal Opinion 33 (March 2, 1931) that

"The relations of partners in a law firm are so close that the firm, and all the members thereof, are barred from accepting any employment, that any one member of the firm is prohibited from taking."

See also Formal Opinions 49 (December 12, 1931) and 192 (February 18, 1939.)

However, in the facts stated by you, the young man was not technically a lawyer while employed by the insurance company, and therefore was not technically subject to the ethical standards of the legal profession.

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Nevertheless, it is the Committee's opinion that, as to cases he in fact investigated or of which he gained any substantial knowledge during his employment, the principles stated above are applicable.

In the preamble to our Canons it is stated that Justice pure and unsullied and absolute confidence on the part of the public cannot be maintained "unless the conduct and motives of the members of our profession are such as to merit the approval of all just men." This preamble further makes it clear that the Canons do not purport to particularize all of the duties of a lawyer, were adopted as a general guide, and that "the enumeration of particular duties should not be construed as a denial of the existence of others equally imperative, though not specifically mentioned."

In addition, Canon 32 indicated specifically that a lawyer should strive for a "deserved reputation for fidelity to private trust***, as an honest man ***." It is the Committee's opinion that a lawyer may not use for his own professional advantage or for the advantage of his client information entrusted to the lawyer or learned by him while in a position of trust, even though when he learned or received the information he did not do so in his capacity as a lawyer or was not at that time a lawyer, for the reason that he learned and was given the information in trust, with the at least implicit understanding that he would not later use it against the person for whom he learned or by whom he was given the information.

In the situation you describe, there is the additional factor that during his employment by the insurance company the young man was a law student, studying not only the law but exposed to the high ethical standards which guide those engaged in the profession of law.

The Committee is of the further opinion that it would not be improper for the young lawyer or his firm to represent claimants against his former employer which relate to matters with which he had no connection and as to which he had no knowledge of any facts during his employment.