
**E-83-9 Attorney's obligation when clients
develop adverse interest**

Facts

Law firm X is retained by T to represent him in a tax matter and the firm continues to represent T in the matter. Client P retained firm X with regard to a patent application and creation of a corporation. An employment contract dispute has developed between P and T and each party has threatened suit.

Question

May firm X withdraw from representing client T and represent P in the dispute between P and T? You ask us to assume that client T disclosed no confidential information to firm X which may be used to his disadvantage or to P's advantage.

Opinion

The American Bar Association Committee on Ethics and Professional Responsibility addressed a similar issue in Informal Opinion 1495 (Dec. 9, 1982). For purposes of this opinion, the Professional Ethics Committee adopts the following views set forth in Informal Opinion 1495:

Loyalty is an indispensable element of a lawyer's relationship with a client. "Neither his personal interests, the interests of other clients, nor the desires of third persons should be permitted to dilute [a lawyer's] loyalty to his client." SCR 20.23(1). The Supreme Court Rules require a lawyer to "decline proffered employment if the exercise of the lawyer's independent professional judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment." SCR 20.28(1).

An exception is made where "it is obvious that the lawyer can adequately represent the interest of each [client] and if each consents to the representation after full disclosure of the possible effect of such representation on the exercise of the lawyer's independent professional judgment on behalf of each." SCR 20.28(3).

The committee views these provisions as clearly prohibiting a lawyer from representing one client in litigation against another client the lawyer simultaneously represents, without, at the least, the consent of both the clients after a full and frank disclosure of the possible consequences of the dual representation. The committee notes that even with the requisite client consent, it also must be “obvious” that the lawyer can adequately represent the interests of each client under the circumstances.

These requirements apply even though the matters are unrelated. The duty of loyalty to the client demands that the client not be concerned about who in the business organization the lawyer may come into contact with, what the lawyer may learn or be told or, whether the lawyer may subconsciously be influenced by differing interests of another. As was said in *IBM Corp. v. Levin*, 579 F. 2d 271, 280 (3d Cir. 1978):

We think, however, that it is likely that some “adverse effect” on an attorney’s exercise of his independent judgment on behalf of a client may result from the attorney’s adversary posture toward that client in another legal matter. [Citations omitted.] For example, a possible effect on the quality of the attorney’s services on behalf of the client being sued may be a diminution of the vigor of his representation of the client in the other matter. *See also Cinema 5, Ltd. v. Cinerama, Inc.*, 528 F. 2d 1384 (2d Cir. 1976); *Grievance Committee v. Rottner*, 152 Conn. 59, 203 A. 2d 82 (1964).

Conclusion

Law firm X is prohibited from representing either P or T with regard to the employment contract dispute, unless the clients consent. Firm X, moreover, is obligated to complete its representation of both P and T with regard to the matters for which X was originally retained and which are entirely unrelated to the employment contract dispute.