



Committee on Professional Ethics

Opinion #329 - 3/18/74 (55-73)

Topic: Conflict of interest

Digest: Lawyer may not represent a client in a matrimonial action against an existing client in unrelated matter even with the consent of the existing client; lawyer may represent a client in a matrimonial proceeding against a former client in an unrelated matter unless confidential information was obtained in the former representation or unless the representation of the former client was so recent as to create an appearance of impropriety.

Code: EC 4-5, 6; EC 5-14, 15, 16
DR 4-101(B), 4-101(C); DR 5-105

QUESTIONS

(a) May a lawyer represent a wife in a matrimonial action anticipated to be uncontested where the lawyer represents both the wife and her husband in a pending action for breach of contract against a third party?

(b) May a lawyer represent a wife in a matrimonial action when the lawyer had previously represented the wife and her husband in a criminal matter?

OPINION

A lawyer is bound to preserve the confidences of his client. EC 4-5; DR 4-101(B). This obligation continues after the termination of his employment. EC 4-6. A lawyer should avoid the appearance of impropriety even if in fact no impropriety exists. EC 9-3.

In certain cases a lawyer may act for clients with conflicting interests if both consent after full disclosure. However, it is improper for a lawyer to act for both parties in an uncontested matrimonial action even with the consent of both following full disclosure. N.Y. State 258 (1972). N.Y. State 303 (1973) sets forth the principles applicable in determining the circumstances under which a lawyer may represent a party against a former client.

In view of the types of questions which may arise in a matrimonial action and for the same reasons that prevent a lawyer from representing both parties to the divorce action itself, the lawyer may not represent the wife in a matrimonial action while continuing to represent the husband in another action even if the husband consents.

Where the representation of the husband in an unrelated criminal

OVER---

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

Opinion #329

-2-

matter ceased several months earlier and any information derived from the former representation of the husband might be used to his disadvantage, the lawyer may not represent the wife in a matrimonial proceeding against the husband. For example, in connection with the former proceeding the lawyer may have learned confidential facts concerning the financial situation of the husband. See, Drinker, Legal Ethics 111 (1953); cf. N.Y. State 54 (1967); N.Y. City 380 (1936).

In the event no such confidential information was obtained by reason of the former representation the lawyer may undertake the representation of the wife unless the representation of the husband was so recent that a proceeding against him would create the appearance of impropriety. EC 9-3. The length of time that would avoid such an appearance of impropriety would depend upon all of the surrounding facts and circumstances. Even if the representation of the husband were very recent, the appearance of impropriety would be obviated if the husband consented to the representation of the wife.
