New York State Bar Association

Committee on Professional Ethics

Opinion 674 (39-94)

Modifies N.Y. State 178 (1971), 187 (1971), 212 (1971), 440 (1976), 466 (1977), 496 (1978), 562 (1984), 598 (1989)

Topic: Conflict of interest; multiple representation of corporation and corporate officer; corporate officer perjury; duty to withdraw.

Digest: Guidelines when corporate officer co-client commits perjury in an arbitration proceeding and when the officer refuses to rectify.

Code: EC 5-18
DR 2-110
DR 4-101
DR 5-105
DR 5-109
DR 7-102

QUESTIONS

1. Where an attorney represents both a corporate officer and the corporation, and the corporate officer, in the presence of the corporation's general counsel, reveals that the officer committed perjury in an arbitration proceeding, may or must the attorney reveal the perjury to the tribunal? If not, may the attorney withdraw?

2. Given the attorney's duty to remonstrate with the officer to reveal the perjury, may the lawyer continue to represent both clients?

3. If the lawyer is unable to continue the multiple representation, may the lawyer represent one of the clients alone?

OPINION

The inquirer represents a corporation and several of its officers as co-respondents in an arbitration proceeding. After the first day of arbitration testimony, one officer/respondent, the corporation's general counsel, and the inquirer met to prepare for future hearing days. During this meeting, the officer revealed that he had perjured himself on the first day of testimony. It appeared also that the substance of the perjury

previously had been submitted to a federal administrative agency in an earlier proceeding involving the corporation alone as a respondent, and that the agency may have relied on the misrepresentation in reaching its determination, although it did not do so explicitly, having cited other factors supporting its determination.

Neither the inquirer nor the corporation's general counsel was aware, prior to the officer's revelation, that either the facts submitted to the federal agency or testified to on the first hearing day were false.

Concurrent representation of a corporation and one or more of its officers necessarily involves multiple representation. This is because an attorney employed or retained solely by a corporation "owes allegiance to the entity and not to a stockholder, director, officer, employee, representative, or other person connected with the entity. In advising the entity, a lawyer should keep paramount its interests and the lawyer's professional judgment should not be influenced by the personal desires of any person… ." EC 5-18. The Code recognizes, however, that an attorney's concurrent representation of a corporation and its officer is permissible, but "only if the lawyer is convinced that differing interests are not present." *Id.* This is because, in the context of concurrent representation, the attorney owes the same duty of allegiance to the corporate officer as he or she owes to the corporation. Both clients are entitled to representation free of conflicting interests.

Whether the lawyer may continue to serve both clients after revelation of the officer's perjury depends on whether the lawyer "is convinced that differing interests are not present," or whether, if differing interests are present, and both clients are permitted to and do consent to continued multiple representation, it is obvious that the lawyer can adequately represent the interests of each. DR 5-105(B), (C). Differing interests is a concept that sweeps within its reach "every interest that will adversely affect either the judgment or the loyalty of a lawyer to a client, whether it be a conflicting, inconsistent, diverse, or other interest." Code, Definition 1. A determination of whether there are differing interests requires an examination of the duties owed the two clients. The next section discusses the duty the lawyer owes to the corporate officer. The following section details the duties the lawyer owes to the corporation.

A. *Duty to the Officer-Client*

DR 7-102(B)(1) provides: "A lawyer who receives information clearly establishing that … [t]he client has, in the course of the representation, perpetrated a fraud upon a person or tribunal shall promptly call upon the client to rectify the same, and if the client refuses or is unable to do so, the lawyer shall reveal the fraud to the affected person or tribunal, *except when the information is protected as a confidence or secret*" (emphasis supplied).[1] The term tribunal "includes all courts and all other adjudicatory bodies" such

[1] The New York Code of Professional Responsibility includes a definition of "fraud" not contained in the ABA Code of Professional Responsibility. Code, Definition 9. It draws upon ABA 341 (1975) in requiring an element of "scienter, deceit, intent to mislead, or knowing failure to correct misrepresentations which can be reasonably expected to

as the arbitration involved here. Code, Definition 6. *See* N.Y. State 523 (1980). DR 7-102(B)(1) "was intended to reach every manner of fraud committed by a client, whether or not the same was perpetrated on a court or other adjudicatory body".

The lawyer's first duty, therefore, is to remonstrate with the corporate officer to rectify the fraud. Assuming the officer refuses to recant, the lawyer must then determine whether the lawyer may or must reveal the fraud to the tribunal.

We assume that the officer's communication to the lawyer of the past perjury is a secret, as that term is defined in the Code, "either because the client has requested that the communication 'be held inviolate' or because disclosure would be embarrassing or would be likely to be detrimental to the client." DR 4-101(A); *see* N.Y. State 523 (1980)(client perjury treated as "secret").

Whether the "secret" is "protected" within the meaning of the last clause of DR 7-102(B)(1) depends on an interpretation of DR 4-101(A). In order to balance the attorney's dual duties to preserve confidences and reveal frauds, we interpret the phrase "confidences and secrets" in DR 7-102(B) to mean those confidences and secrets that must be preserved by DR 4-101.[2] In a case where the lawyer is permitted to reveal a confidence or secret under DR 4-101(C), disclosure of the fraud is mandatory under DR 7-102(B). *See* ABA 341 (1975); *see also* N.Y. State 523. If no exception applies, disclosure is prohibited.

The circumstances of this inquiry arguably invoke two of these exceptions. The first relates to the "discretion" afforded by DR 4-101(C)(2) to disclose a secret "when permitted under Disciplinary Rules or required by law or court order." If the inquirer is required by law to disclose, revelation of the perjury would not violate Canon 4. *E.g. McKissick v. United States*, 379 F.2d 754, 761 (5th Cir. 1967). Whether this exception applies is a question of law, beyond the jurisdiction of this Committee.

The second potentially applicable exception is the authorization in DR 4-101(C)(3) to reveal the "intention of a client to commit a crime and the information necessary to prevent the crime." While the Code permits a lawyer to reveal a

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induce detrimental reliance by another person." *Id.* Although the inquirer expresses some doubt that the federal administrative agency relied upon the prior assertions of the officer in its ruling, we assume, absent any suggestion that scienter was lacking, that his perjury in the arbitration was a fraud. Because the officer told the inquirer of his perjury, the inquirer "knows" of "information clearly establishing" the fraud on the tribunal, thus triggering the obligations imposed by DR 7-102(B). *Cf. In re Grievance Committee*, 847 F.2d 57, 61-63 (2d Cir. 1988)("actual knowledge" is a precondition to the disclosure obligation).

[2] ABA 341 (1975) similarly interpreted the phrase "except when the information is protected as a privileged communication" in DR 7-102(B) of the ABA Model Code of Professional Responsibility as referring to "those confidences and secrets that are required to be preserved by DR 4-101," noting that this interpretation "best balances the lawyer's duty to preserve confidences and to reveal frauds."

communication from a client regarding a future or ongoing crime, it does not permit the lawyer to reveal a client's secret or confidence with respect to a past fraud or crime. *Compare* N.Y. 523 *with* N.Y. State 649 (1993). We do not believe that the perjury of the corporate officer may be characterized as continuing or ongoing for purposes of the future crimes exception to Canon 4's confidentiality obligation.

Although DR 7-102(B)(1), as amended in New York in 1976, might be interpreted to require revelation of past perjury discovered after the fact when the proceeding in which the perjury was committed (and later discovered) has not yet concluded,[3] *see* ABA Model Rule 3.3(a)(Code Comparison Comment), this interpretation has not generally been accepted. *See* ABA 341; N.Y. State 466 (1977); N.Y. State 454 (1976)("during the pendency of proceedings"). Furthermore, whether recantation of the perjury in order to avoid prosecution is possible is a question of law on which we do not opine. We do not believe, however, that the inquirer needs to resolve this complex legal issue. In N.Y. State 405 (1975), we recognized that, although the client's communication to the inquirer of his intent to commit a continuing crime would invoke the future crime exception of DR 4-101(C)(3), disclosure of the continuing crime, which "is normally incident to" the past crime, could not be made without concomitant disclosure of the past crime. Thus, we held that the discretion to disclose the continuing crime should not be exercised. The same considerations are even more pertinent with regard to perjury. Even if, under applicable law, the officer's perjury is a continuing crime, we believe that the lawyer does not have the discretion to disclose under DR 4-101(C)(3),[4] because otherwise the lawyer "would, in effect, be assuming a role adverse to the interests of his client and repugnant to the confidential relationship between lawyer and client." N.Y. State 405; *see also* Wayne Brazil, *Unanticipated Client Perjury and the Collision of Rules of Ethics, Evidence, and Constitutional Law*, 44 Mo. L. Rev. 601, 620 (1979). The New York Code of Professional Responsibility favors the lawyer's obligation to maintain confidentiality over the lawyer's duty as an officer of the court.[5]

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[3] Under the law and in the peculiar circumstances of this ongoing arbitration proceeding, the communication by the corporate officer of the prior perjury, and the refusal to rectify, might be communications of an intention to commit a continuing or an as yet uncompleted crime. For example, federal and state perjury statutes contain limited recantation provisions that allow a perjurer to escape prosecution if the perjury is appropriately rectified before the court proceeding is concluded. 18 U.S.C. § 1623(d); N.Y. Penal Law § 210.25.

[4] Thus, in this respect, N.Y. State 405, should be limited to its facts.

[5] *See* N.Y. State 523 ("primacy of lawyer's obligation under Canon 4 when [New York] amended the mandatory disclosure provision of DR 7-102[B][1]" in 1976); N.Y. State 496 (1978) ("theoretical tension between Canons 4 and 7 was then clearly resolved in favor of preserving the confidences and secrets of a client"); N.Y. State 479 (1978); N.Y. State 454 (1976).

ABA Model Rule 3.3(a)(4) is to the contrary, requiring a lawyer to "take remedial measures" if "material" evidence was offered during a proceeding and the lawyer "comes to know of its falsity." This solution was not adopted in New York when the Code was amended in 1990. *See* Marjorie Gross, *The Long Process of Change: The 1990*

An attorney should not be subject to discipline for making an error of judgment concerning whether the perjurious conduct communicated to him is of a continuing crime variety.[6] Accordingly, we do not believe that the future crime exception to the nondisclosure rule of DR 4-101(C)(3) applies to the inquirer's situation.

Thus, the inquirer is duty bound to maintain the confidences of the corporate officer client and may not reveal the perjury. An attorney faced with this situation may choose to withdraw from the representation of the officer. Under the 1990 amendment to DR 2-110(C), a lawyer may, subject to the rules of the tribunal, withdraw for any reason "if withdrawal can be accomplished without material adverse effect on the interests of the client." DR 2-110(C)(preamble). Even if withdrawal would have a material adverse effect on the client's interests, however, the 1990 amendments permit withdrawal in specified circumstances such as when the client "[b]y other conduct renders it unreasonably difficult for the lawyer to carry out employment effectively[,]" DR 2-110(C)(1)(d), or when the client "[h]as used the lawyer's services to perpetuate a crime or fraud." DR 2-110(C)(1)(g).

The representation of the officer, as for example by unknowingly eliciting the perjury by direct examination, is tantamount to using the lawyer's services in aid of the fraud within the meaning of DR 2-110(C)(1)(g). The inquirer also could conclude that the client's perjury in this ongoing proceeding will make it unreasonably difficult to carry out the representation within the meaning of DR 2-110(C)(1)(d). When the client's material interests would be adversely affected, a withdrawing attorney must, however, "tak[e] steps to the extent reasonably practicable to avoid foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, delivery to the client of all papers and property to which the client is entitled and complying with applicable laws and rules." DR 2-110(A)(2). This must be accomplished, in every aspect, without divulging the "protected" secret. To the extent our prior opinions are inconsistent with the 1990 amendments relaxing the withdrawal rules,[7] they are modified consistent herewith.

In summary, the attorney's duty with respect to the officer/client is to remonstrate with the officer. In the event the officer refuses to rectify the perjury, the attorney may not reveal the perjury, but may withdraw from the representation, provided adequate steps are taken to protect the client's rights.

Amendments to the New York Code of Professional Responsibility, 18 Ford. Urb. L. J. 283, 332 (1990-91).

[6] *See* Brazil, *supra*, at 620 ("[t]he uncertainty that pervades this area of the law would make it impractical and unfair to demand that clients and attorneys use the doctrine of recantation to determine whether given misrepresentations would be considered as either 'continuing' or as 'past' misconduct.")

[7] *See* N.Y. State 598 (1989), 562 (1984), 496 (1978), 466 (1977), 440 (1976), 212 (1971), 1987 (1971), 178 (1971).

B. *Duties to the Corporate Client*

In this section, we discuss the attorney's duties with respect to its other client, the corporation. The succeeding section discusses whether these duties and those outlined above with respect to the officer create "differing interests."

The attorney may have a duty of remonstration under DR 7-102(B)(1) with respect to the corporation as well as the officer. The attorney first must determine whether the law in the applicable jurisdiction provides that the perjury by the corporate officer is imputed to the corporation. If so, the corporate client has committed a fraud on the tribunal and the lawyer has a duty under DR 7-102(B)(1) to remonstrate with the corporation. If not, the corporate client has not committed a fraud on the tribunal, but the lawyer has a duty to provide competent advice to the corporation with respect to the perjury committed by the corporate officer. We take each situation in turn.

1. *Perjury of Officer Imputed To Corporation*

If applicable law would impute the officer's perjury to the corporate client, the corporation is deemed to have perjured itself in the arbitration and so the corporation must be approached by counsel in an effort to rectify as required by DR 7-102(B)(1). EC 5-18 provides that when a lawyer for a corporation learns that a (non client) officer has acted in a manner inimical to the interests of the corporation and this act is "a violation of the law which reasonably might be imputed to the entity, and is likely to result in substantial injury to the entity[,] … the lawyer should proceed as is reasonably necessary in the best interest of the entity." Giving "due consideration to the seriousness of the violation and its consequences," and other relevant considerations, and keeping in mind that "[a]ny measures taken should be designed to minimize disruption of the entity and the risk of revealing confidences and secrets of the entity[,]" the lawyer may act in the following manner: "asking reconsideration of the matter, advising that a separate legal opinion on the matter be sought for presentation to appropriate authority in the entity, and referring the matter to higher authority in the entity not involved in the wrongdoing, including, if warranted by the seriousness of the matter, referral to the highest authority that can act in behalf of the entity as determined by applicable law." EC 5-18. This DR 7-102(B)(1) duty of remonstration with the corporate client may be discharged without violating Canon 4 with respect to the officer-client. As between the two joint clients, there was no secret imparted to the attorney in the strategy session that must be held in confidence as against the other.[8]

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[8] *Car & General Ins. Corp. v. Goldstein*, 179 F. Supp. 888, 891 (S.D.N.Y. 1959), *aff'd*, 277 F.2d 162 (2d Cir. 1960); *United States v. Schwimmer,* 892 F.2d 237, 243 (2d Cir. 1989). By virtue of the general counsel's presence, indeed by virtue of the inquirer's presence as lawyer for the corporation, the corporation was present when the individual client revealed the perjury. As against "the rest of the world," however, the inquirer is in possession of a secret of both clients. *In re LTV Securities Litigation*, 89 F.R.D. 595, 604-05 (N.D. Tex. 1981)(quoting *Matter of Grand Jury Subpoena*, 406 F. Supp. 381, 386 [S.D.N.Y. 1975]); *see also* 8 J. Wigmore, Evidence § 2312 at 603 (McNaughton Rev. 1961); Charles Wolfram, Modern Legal Ethics 274-75 (1976). Where one client waives

Where the corporate client does not rectify, the attorney may not disclose the perjury to the arbitral tribunal. The perjury is a secret of the corporate client[9] and Canon 4 would ordinarily prohibit such disclosure by the inquirer unless the attorney otherwise is "required by law or court order" to disclose. DR 4-101(C)(2). As in the case of the individual client, there is discretion to withdraw from the joint representation, as set forth above.

2. *Perjury Not Imputed to Corporation*

If the law in the inquirer's jurisdiction provides that the officer's perjury is not imputed to the corporate client, the latter has not committed a fraud on the tribunal. There is therefore no duty under DR 7-102(B)(1) to remonstrate with the corporation. If the officer's perjury is a secret of the corporation under DR 4-101(A) because the corporation does not choose to encourage the officer to rectify or to make the disclosure itself, the attorney cannot reveal the perjury.

The attorney for the corporation also has a duty to provide competent and zealous representation to its client. Canons 6 and 7. This duty requires the attorney to advise the corporation how to "proceed as is reasonably necessary in the best interest of the entity." EC 5-18. This may include advising the corporation to reveal the fraud even if there is no duty to do so.

C. *Multiple Representation – The Presence of "Differing Interests"*

The preceding two sections generally described the duties owed to each client by independent and competent counsel, and the ethical obligations that attend a lawyer's discharge of those duties on behalf of each client. Ordinarily, a lawyer may not represent multiple clients if the representation is likely to "involve the lawyer in representing differing interests." DR 5-105(B). A lawyer, however, may represent multiple clients with differing interests "if it is obvious that the lawyer can adequately represent the interest of each and if each consents to the representation." DR 5-105(C). Where the perjury is imputed to the corporation, and thus the attorney has a duty to remonstrate with both clients, we conclude that differing interests necessarily are present and continuation of the multiple representation would create an impermissible representation of differing interests. Where the perjury is not imputed to the corporation, we conclude that whether differing interests are present depends on the

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the privilege and consents to disclosure, the attorney nevertheless owes a duty to the other client to protect the communication. *In re Grand Jury Subpoena Duces Tecum*, 391 F. Supp. 1029, 1034 (S.D.N.Y. 1975).

[9] The perjury is a secret either because it is imputed under applicable law to the corporation or is information gained in the professional relationship that the corporation has requested be kept inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the corporation. DR 4-101(A).

facts. We consider each situation in turn and then consider whether consent is available to cure any conflict.

1. *Differing Interests When Perjury Imputed to Corporation*

Where the perjury is imputed to the corporation, the lawyer has a duty to remonstrate with both of the lawyer's joint clients. While, in the abstract, the corporation's and the officer's interests might appear to coalesce if the perjury of the officer were endorsed or tacitly acquiesced in by the corporation, the lawyer has a duty to each client to persuade the client to rectify, and carrying out that duty is likely to require the attorney to seek action by one client that would be inimical to the interests of the other client. For example, competent (Canon 6) and zealous (Canon 7) representation of the corporation may demand a course of action that is unfavorable to the interests of the individual officer/client. Specifically, an attempt to persuade the governing body of the corporation to rectify, and thereby expose the errant officer who refuses to recant, will disadvantage or "adversely affec[t]" the officer within the meaning of the first clause of DR 5-105(B). In addition, statutes often encourage corporations to expose corporate employee wrongdoing. *E.g.* U.S. Sentencing Commission, Guidelines Manual, § 8C2.5 (f)-(g)(and comment 12); *see also* N.Y. State 650 (1993)(corporate lawyer participation in corporate wide compliance with law program). There often may be strong legal incentives for the corporation to rectify the officer's fraud.

Thus, the lawyer owes the individual client who refuses to recant a duty to maintain confidences as against the rest of the world at the same time the lawyer owes a duty to the corporate client to encourage it to disclose and rectify. The duty to remonstrate with the corporation to convince it to rectify, or the duty to represent zealously the corporation by encouraging it to reveal the officer's fraud conflicts with the duty to preserve the individual client's confidences if he refuses to rectify. The lawyer cannot discharge the one duty without violating the other. The same conflict would arise if the corporation refused to rectify; the inquirer's duty in such a case to preserve the secrets of the corporation would conflict with the duty to remonstrate with the individual client by urging the officer to disclose.

We conclude, therefore, that "differing interests" are clearly present when a lawyer represents both the perjuring officer and the corporation where the applicable law imputes the perjury to the corporation. Thus, the lawyer must withdraw from the multiple representation unless consent is available (*see* Section D.)

2. *Differing Interests Where Perjury is not Imputed to the Corporation*

Where the perjury is not imputed to the corporation, the attorney has no duty to remonstrate with the corporation to rectify the perjury. Nevertheless, the two clients may have differing interests such that the lawyer's duty to competently and zealously represent the corporation conflicts with the duties owed to the officer.

The lawyer may be required to take action on behalf of its corporate client that may impair the representation of the officer-client. For example, representation of the corporation, including a proper discharge of the duty to "minimize disruption of the entity and the risk of revealing confidences and secrets of the entity[,]" EC 5-18, may not be possible, when the lawyer is simultaneously discharging the duty imposed by DR 7-102(B)(1) to remonstrate with the officer to correct the perjury.

The determination of whether differing interests are present will depend on the facts. If differing interests are not present, the lawyer may continue the multiple representation. If differing interests are present, the lawyer must withdraw from the multiple representation unless consent is available.

D. *Consent to Multiple Representation*

DR 5-105(B) prohibits continuation of multiple representation when differing interests arise unless "it is obvious that the lawyer can adequately represent the interest of each 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." DR 5-105(C).

Whether it is "obvious" that the attorney can "adequately represent the interest of each" client and whether the attorney can make "full disclosure" to obtain consent are highly fact-specified issues.

If the attorney concludes that the obviousness test is satisfied, the necessary consent of each client must be procured after the requisite disclosures are made. *See* Wolfram, *supra* §7.2.4, at 345-46 (describing how the disclosure may be made). Because of the application of the joint client privilege rule, there is no impediment preventing discussion with each client of the full implications of the officer's perjury.[10]

If, on the other hand, the lawyer concludes that the obviousness test of DR 5-105(B) is not satisfied, or one of the clients does not consent, the lawyer must withdraw from the joint representation.

E. *Continued Representation of One Client Alone*

Where the lawyer chooses to or must withdraw (either for failure to meet the obviousness test or for lack of consent), the lawyer's ability to continue to represent one of the clients individually depends on whether the lawyer obtains consent to represent only one of the clients. Where both clients consented to the continued multiple representation, but the lawyer concluded that the obviousness test was not satisfied,

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[10] If, however, the lawyer is in possession of other relevant secrets of one client, which were communicated without the knowledge of the other client, and which are material to the full disclosure necessary to obtain consent, full disclosure may not be possible without the consent of the client adversely affected by prospective disclosure of the secret. DR 4-101(C); DR 5-108(A)(2); *see also* N.Y. State 628, at 6-7 (1992).

Client 1's consent to multiple representation does not imply a consent to continued representation of Client 2. For example, the corporation may wish to present a joint defense with the officer, without the risk that, if the lawyer must withdraw from the joint representation, the lawyer will continue to represent the officer. Similarly, where one client consents, but the other does not, the lawyer must determine whether Client 1's consent to multiple representation extends to representation of Client 2 alone. The lawyer should not presume that Client 1's consent to multiple representation is concomitantly a consent to continued representation of Client 2 alone. Furthermore, the client for whom representation will not continue is now a former client for purposes of DR 5-108, which requires the lawyer to obtain that former client's consent to a representation adverse to his or her interests. The consent required by DR 5-108 could only be obtained after the client becomes a "former client."

Thus, the lawyer must obtain explicit consent from Client 1 to continue to represent Client 2 alone (or vice versa).[11] Client 1 also must consent to the lawyer's use on behalf of Client 2 during the representation of Client 2 of any confidences or secrets imparted to the lawyer by Client 1 during the period of joint representation. Although the lawyer may postulate the continued representation of one joint client alone can be accomplished under Canons 6 and 7 without use of confidences and secrets imparted by the withdrawing client, there is far too much danger in this circumstance that lawyer's duty to maintain Client 1's confidences against the world will interfere with the duty owed to Client 2 to divulge. *Cf.* DR 4-101(C)(1); DR 5-108(A)(2).

Absent such explicit consent from the other client, the lawyer must withdraw from representation of either client.

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[11] In a prior opinion involving withdrawal from joint representation, this Committee opined that full withdrawal from both representations was required where one joint client communicated a confidence or secret detrimental to the other joint client. N.Y. State 555 (1984). There, however, the secret was imparted without the knowledge of the second joint client. We explained: "[I]t is recognized that if the communication [by the first joint client] discloses a conflict between the clients with respect to the subject of the representation, full withdrawal is mandated." Similarly, in N.Y. State 560 (1984), we opined that it was improper for a lawyer to defend two defendants in a medical malpractice action where one defendant may have a cross-claim against the other. We noted that "in the absence of consent … if the attorney has received confidential information from the client who has requested separate counsel, the firm must withdraw from representation entirely so as not to be put in the position of using against a former client confidential information received from that client." In N.Y. State 592 (1988), we opined that full withdrawal from both representations was required where in the course of the joint representation of criminal defendants, one client confided to the lawyer that he had information unfavorable to the other client. *See also* ABA Inf. 1441 (1979). In each of these opinions, the confidence or secret was imparted by one joint client without the knowledge of the other joint client and the secret was required to be used in the lawyer's effective continued representation of the second client. In the current inquiry, the secret was imparted by one joint client with the full knowledge of the other client, and thus the lawyer is able to seek consent to continued representation.