

ETHICS OPINION

RO-91-42

QUESTION:

"Formerly, approximately ten (10) years ago, I represented J. [REDACTED] D. [REDACTED] in the presentation of a Workmen's Compensation claim while she was an employee of K. [REDACTED]'s, Inc., E. [REDACTED], Alabama. The claim and representation was settled with a lump sum consent settlement and medical benefits remained opened.

In 1988 her son and daughter were involved in an auto accident wherein her daughter, B. [REDACTED] D. [REDACTED], was killed and her son, C. [REDACTED] D. [REDACTED], the driver of the auto, was injured. As a result of this auto collision, C. [REDACTED] D. [REDACTED] and J. [REDACTED] D. [REDACTED], as parents and next friends of each minor child, instituted a suit for personal injury damages for their son and for the wrongful death of their daughter, and a derivative claim for injuries as the parents.

I have been asked to represent the driver of the vehicle and owner of the vehicle and employer of the driver, R. [REDACTED] E. [REDACTED], which collided with the vehicle occupied by the minor children of the D. [REDACTED]s.

\* \* \*

I request an opinion to rely upon to make certain my representation of R. [REDACTED] et al., is not an ethical violation. I am asked to join this litigation as co-counsel with another attorney who has his office in Montgomery. For this reason, I need a response as quickly as possible to permit the other attorney to obtain additional legal assistance, if I am wrong in my belief I can assist him."

\* \* \*

ANSWER:

You may ethically represent the driver and owner of the vehicle against your former client.

DISCUSSION:

Rule 1.9(a) prohibits subsequent representation of a person whose interests are materially adverse to the interests of a former client in the same or in a substantially related matter. There appears to be no legal relationship to your prior representation of Mrs. D. [REDACTED] ten years ago on a worker's compensation claim and the present case. In reality, Mrs. D. [REDACTED] is only a titular party in the auto accident case. Her medical

condition, past or present, is not going to be in issue. In the Disciplinary Commission's view, the matters are not "substantially related."

Rule 1.9(b) prohibits your adverse use of any information violating to the original representation of Mrs. D. [REDACTED]. If your defense in the present case would require the adverse use of any client confidences then you should not involve yourself. If this is not a problem, then you may enter the accident case without concern for ethical conflict with your former client.

MLM/vf

10/29/91