

ETHICS OPINION

RO-92-15

QUESTION:

"This is to confirm our recent conversations by telephone regarding the discussions of the possible conflict of interest that may have arisen in one of this firm's cases. An outline of the facts at present are as follows:

My law firm has recently been asked to associate with another law firm in a personal injury suit. However, a member of my firm represents the Defendant in the personal injury suit regarding a collection matter. Judgments have been obtained by my partner and recorded. The judgments were recorded in 1988 and 1989. The firm has had no contact with the client in at least 18 months. My firm would like to take the personal injury suit and no longer handle the old judgments which are not likely to ever be recovered."

* * *

ANSWER:

You may represent the personal injury client against the former client in the collections matter because the file has been dormant for eighteen months thus relegating the collections client to the status of former client. Rule 1.9 of the Rules of Professional Conduct permits you to represent a current client in a matter adverse to the former client so long as the matters are not substantially related and so long as you do not use information obtained in the representation of the former client to the disadvantage of the former client.

DISCUSSION:

"The borderline between former-client conflicts and simultaneous-representation conflicts is critical because of the much stricter rule in simultaneous-representation cases that litigation is generally and absolutely prohibited against a present client, regardless of relationship between the two matters." Wolfram, Modern Legal Ethics, 358 (1986). See Cinema 5, Ltd. v. Cinerama, Inc., 528 F. 2d 1384, 1386 (2d Cir. 1976).

The question then is without some affirmative action on the part of the lawyer or law firm terminating the representation, does the collections

client retain the status of "current client" as long as the judgment remains uncollected? We think not. While it would be neater practice for the firm, at some point, to return the judgment to the client and indicate that the matter is closed, such a procedure is not the only way that the collections client becomes a former client. It is our view that a current client may become a former client if the subject matter of the representation is dormant and there is a reasonable likelihood that it will remain so.

In the factual situation presented by your question, the judgments were recorded in 1988 and 1989 and you had had no contact with the client for the last eighteen months. You have also indicated that the judgments are not likely to ever be recovered. This is not unlike the situation in Abbott Laboratories v. Centaur Chemical Company, 497 F. Supp. 269 (1980). In that case, Abbott retained a lawyer to, along with in-house counsel, prosecute a patent interference matter. The lawyer filed a number of documents and presented oral argument on behalf of Abbott at the final hearing before the U.S. Patent Office Board of Patent Interference. The lawyer took no further action in the matter and, after eleven months, was retained by Centaur in an action brought by Abbott. The court held that the lawyer's representation of plaintiff in an earlier unrelated matter did not preclude the firm from representing the defendant where there was little more than a possibility that the lawyer would continue to represent the plaintiff in the unrelated matter and nearly eleven months had passed since the lawyer had been asked to act on behalf of the plaintiff.

Adopting the logic in Abbott it is our view that you may represent the personal injury client against the collections client because the matter has been dormant for eighteen months with little likelihood that it would be revived.

RWN/vf

8/3/92