

ADVISORY ETHICS OPINION 81-03

SYNOPSIS:

An attorney may represent a client and the client's insurance company in a counterclaim against the client. Careful attention should be paid, however, to DR 5-106 and EC 5-14, EC 5-15 and EC 5-16.

QUESTION PRESENTED:

Attorney A represents a plaintiff who sues a defendant, who acquires the services of Attorney B. Defendant files a counterclaim against the plaintiff. Defendant is insured for the allegations contained in the complaint and the plaintiff is insured for the allegations contained in the counterclaim. The question posed is "Can Attorney A represent the plaintiff in his claim against the defendant and also represent the plaintiff's insurance company as to the counterclaim?"

ANALYSIS:

Based on the question as presented, there is no reason at all why Attorney A may not represent the plaintiff as to the claim against the defendant and also represent the plaintiff as to the counterclaim. There is nothing to distinguish this situation from what might most commonly be found in construction contract cases wherein it is commonplace for an attorney to file suit on behalf of his client and soon thereafter to be forced to defend a counterclaim.

The only question that might arise (and is not raised by the question presented) is whether or not there is a differing interest between the plaintiff and the plaintiff's insurance company. Attention should be given to DR 5-106 and more specifically EC 5-14, EC 5-15 and EC 5-16. EC 5-15 provides inter alia:

"If a lawyer is requested to undertake or to continue a representation of multiple clients having potentially differing interests, he must weigh carefully the possibility that his judgment may be impaired or his loyalty divided if he accepts or continues employment. He should resolve all doubts against the propriety of the representation."

While it is difficult to imagine such divergence of interest in this case, if it exists the attorney can only represent the client and some other attorney would have to represent the plaintiff (for the insurance company) on the counterclaim.