

# ADVISORY ETHICS OPINION 87-20

## SYNOPSIS:

An attorney may represent the debtors in a bankruptcy proceeding where the creditors include a good friend of another attorney in the same practice who also happens to be the husband of a cousin of the same attorney.

## FACTS:

Attorneys A and B are associated with each other in the practice of law. They share office space and some of their cases and regard themselves as a single law firm. Attorney A represents the debtors in a bankruptcy proceeding. One of the creditors in the bankruptcy proceeding is a bank. The bank bases its claim against the debtors upon a Security Agreement and Note which the bank purchase from Mr. X with recourse. Mr. X is the husband of Attorney B's cousin. Mr. X and Attorney B have known each other since childhood and are good friends. In the event that the bank successfully seeks recourse against Mr. X, Mr. X will have the opportunity to assume the bank's position in the bankruptcy proceeding. Attorney A has fully disclosed these facts to his clients and they have consented to his continued representation of them.

The committee is asked:

- (1) Is it permissible for Attorney A to continue to represent the debtors at this time;
- (2) Will there be a conflict of interest if Mr. X assumes the bank's position in the bankruptcy proceeding; and
- (3) If there is a conflict of interest under either (1) or (2), may Attorney A continue to represent the debtors if the consent to that representation after full disclosure of the relationship between Mr. X and Attorney B.

## OPINION:

DR 5-105 (D) provides that if a lawyer would be required to decline or withdraw from employment under a Disciplinary Rule, no partner or associate or any other lawyer affiliated with him or his firm may accept or continue such employment. Thus, if Attorney B could not represent the debtors, under the circumstances presented here, then Attorney A is likewise prohibited from doing so.

DR 5-101 (A) provides that in the absence of full disclosure and client consent, a lawyer shall not accept professional employment if the exercise of his professional judgment maybe affected by his own personal interests. This Disciplinary Rule is supplemental by EC 5-1 which provides that the professional judgment of a lawyer must be exercised solely for his client's benefit "free of compromising influences and loyalties. Neither his personal interests, the interests of other clients, nor the desires of third persons should be permitted to dilute his loyalty to his client."

We find nothing in the facts presented by Attorney A which in and of itself, suggests a conflict of interest. There is no indication, for instance, that the firm represented Mr. X in connection with the execution or sale of the Note or Security Agreement or that Mr. X is even a client of the firm. There is only the fact that Mr. X and Attorney B are good friends and that Mr. X is married to Attorney B's cousin.

The relationship between Attorney B and Mr. X would not per se disqualify Attorney B from representing the debtors. The propriety of that representation would depend instead on the effect of the relationship on Attorney B's professional judgment. Attorney A has voiced no expectation that the relationship will create any actual risk of unfairness to the debtors.

We find nothing in the facts, as recited, which, in and of itself: would prevent Attorney B from representing the debtors in the bankruptcy proceeding even in the event that Mr. X should become a creditor in that proceeding. Thus Attorney A's affiliation with Attorney B has no impact on his ability to represent the debtors.

If Attorney A does not know of any risk of unfairness to his clients which will result from the relationship between Attorney B and Mr. X, he may proceed to represent the debtors, having fully disclosed the foregoing facts to them and having obtained their consent.