

# ADVISORY ETHICS OPINION 92-11

## **SYNOPSIS:**

A lawyer may represent a new client despite the objection of former clients where the latter are not parties in the new action, and where there is no substantial relationship between the subject matter of the former and current representation.

## **FACTS:**

Attorney A currently represents a client who is the defendant in a civil matter. The client is the chief of police of the town where Attorney A's former clients reside. Several years previously, A represented the former clients in several matters and, at their request, once complained to the town attorney that the police department was not diligent in its prosecution of trespassers on the former clients' property.

Although the former clients have pending cases against the chief, Attorney A does not represent him in those matters. He may, however, be subpoenaed by the former clients to testify in these unrelated cases.

## **ANALYSIS:**

The issue presented by these facts is whether a lawyer may represent a current client over the objection of former clients in a proceeding where the former clients are not parties.

We are not here involved with the representation of a client in an action where the former clients are adversary parties, nor is there any possibility that Attorney A may use confidences or secrets of the former clients to their disadvantage in representing the new client.

## **PRIOR OPINIONS:**

The Committee has issued several Opinions in the past, all of which interpreted Disciplinary Rule 4-101 (8), which provides that a lawyer shall not knowingly:

- “(1) Reveal a confidence or secret of his client;
- (2) Use a confidence or secret of his client to the disadvantage of the client.
- (3) Use a confidence or secret of his client for the advantage of himself or of a third person, unless the client consents after full disclosure.”

The Committee has adopted the “substantial relationship” test for determining the propriety of successive representations, as we wrote in Opinion 78-3 and have quoted in Opinion 89-15.

The Rules on providing representation against past clients are fairly well defined. Such representation is unethical if the matters in the current representation are "substantially related" to the matters involved in former representation of the now-adversary party, or if the new representations will require the "lawyer to do anything which will injuriously affect his former client in any matter in which he represented him . . .”

In Opinion 85-6, where the former client was not a party to the later proceeding, we found no conflict. Similarly, on the facts presented here, there is no conflict of interest and no potential for violation of DR 4-101 (B).

## **CONCLUSION:**

In our opinion, Attorney A may represent his new client in this totally unrelated matter despite the fact that he may at some time become a witness in litigation brought by the former clients against the new client.