

Nebraska Ethics Advisory Opinion for Lawyers
No. 74-6

MEMBERS OF THE SAME LAW FIRM MAY PROPERLY REPRESENT AND APPEAR AS PERSONAL COUNSEL ON BEHALF OF A PARTNER OF THE LAW FIRM IN AN ACTION AGAINST SUCH PARTNER INVOLVING AN ALLEGED BREACH OF HIS FIDUCIARY DUTY WHILE SERVING AS A DIRECTOR OF A CORPORATION EVEN THOUGH SUCH PARTNER WOULD BE A WITNESS ON HIS OWN BEHALF DURING THE TRIAL, PROVIDED THE LAWYERS FOR THE DEFENSE COMPLIES WITH THE CODE OF PROFESSIONAL RESPONSIBILITY.

QUESTION

May other members of the same law firm properly represent and appear as personal counsel on behalf of a partner of the law firm in an action against such partner involving an alleged breach of his fiduciary duty while serving as a director of a corporation? It is contemplated that such partner would be a witness on his behalf during the trial.

DISCUSSION

No surrounding facts were given to the Advisory Committee. Just the question and the fact that the partner being sued would be a witness on his own behalf. It is not known for illustration whether the firm represents the corporation of which the partner was the director; whether the corporation is also being sued in the same action and being represented by the same firm; whether there may be a contingent financial obligation of the partnership.

Any specific ethical problems therefore cannot be pinpointed. The biggest problem for the firm is to avoid the appearance of professional impropriety. Their attention is particularly called to EC 9-2 of the code of professional responsibility.

Placing the question in perspective, it would seem that lawyers representing a partner are in the same position that such lawyers would be if requested to represent their respective wives or other members of the family in a lawsuit. It may or may not be wise but this would be a decision to be made by all the persons involved.

It would seem therefor that the partner in trouble is the client and he would have the same right as any other client to choose his lawyers to defend him. If he chose some of the other members of the partnership to represent him, such partners would owe the same duty to the partner in trouble as they would to any other client and such partners as defense lawyers would owe the same duties of professional responsibility that they would owe to any other client, to the court, and to the Plaintiff and his counsel.

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