

Nebraska Ethics Advisory Opinion for Lawyers
No. 78-6

A LAWYER IS ABLE TO REPRESENT A CLIENT CONCERNING FACTS WHICH RELATE TO A PREVIOUS CLIENT OF THE LAWYER, SO LONG AS THE LAWYER IS ABLE TO PRESERVE THE CONFIDENCES AND SECRETS OF THE PREVIOUS CLIENT AND STILL MAINTAIN HIS INDEPENDENT PROFESSIONAL JUDGMENT ON BEHALF OF THE NEW CLIENT.

FACTS

Two individuals worked for a credit union and became involved in an administrative hearing before the National Credit Union Administration for alleged activities they conducted while in the credit union. The credit union referred certain of its accounts for collection to a corporation that specialized in collections. The credit union, through the two individuals, also made loans to that particular corporation which were in apparent violation of rules governing credit unions. Because of these loans and other activities by the two individuals, the National Credit Union Administration conducted an investigation of the two individuals, as a result of which the individuals resigned their positions, with no admission of guilt. Lawyer A represented the two individuals during the investigation and administrative proceedings.

The corporation that specialized in collections is now also being investigated by the National Credit Union Administration for its activities with the credit union. A part of the investigation does concern the loans made to it but goes beyond the activities of the two individuals.

The corporation now wants Lawyer A to represent it in the administrative proceedings. The two prior clients have approved the employment.

DISCUSSION

There are essentially two Canons involved, Canons 4 and 5. Canon 4 provides that a lawyer should preserve the confidences and secrets of a client, while Canon 5 provides that a lawyer should exercise independent professional judgment on behalf of a client. As the situation now exists, there would appear to be only one conflict between the representation of the corporation and the fact that the lawyer had previously represented the two individuals. The two individuals had entered into certain contracts or loans with the corporation while the individuals were acting on behalf of the credit union and these contracts may become the subject of the investigation by the National Credit Union Administration. If the corporation should try to claim that these contracts were invalid or not binding for any reason whatsoever, then the lawyer would obviously be in the position that the individuals who he had previously represented would be called upon to give their interpretation of the contract and a conflict would exist.

All of the individuals involved, including the two individuals who worked for the credit union and the corporation itself, are aware of the fact that the lawyer represented the two individuals previously and neither the corporation nor the two individuals has any objections to the lawyer representing the corporation.

Ethical Consideration 5-14 requires that a lawyer maintain the independence of his professional judgment and that he preclude the acceptance or continuation of employment that will adversely effect his judgment.

Disciplinary Rule 5-105 provides as follows:

A. A lawyer shall decline proffered employment if the exercise of his independent professional judgment in behalf of his client will be or is likely to be adversely affected by the acceptance of the proffered employment, or if it would be likely to involve him in representing differing interest, except to the extent permitted under DR 5-105 (C).

B. A lawyer shall not continue multiple

employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by his representation of another client, or if it would be likely to involve him in representing differing interests, except to the extent permitted under DR 5-105 (C).

C. In the situations covered by DR 5-105 (A) and (B), a lawyer may represent multiple clients if it is obvious that he can adequately represent the interest of each and if each consents to the representation after full disclosure of the possible effect of such representation on the exercise of his independent professional judgment on behalf of each.

The fact that the lawyer no longer represents the two individuals who worked for the credit union does not allow him to reveal confidences he received during the period of time that he did represent them. Ethical Consideration 4-6 provides that the obligation of a lawyer to preserve the confidences and secrets of his client continues after the termination of the employment.

At the present time there would appear to be no conflicts which would prohibit the representation by the lawyer of the corporation. Even though there is the possibility of such conflict arising in the future, it is the committee's opinion that there is no violation at this time. The possibility that other matters might develop has been held to be sufficient to require the attorney to decline employment. See *Drinker*, *Legal Ethics* 109 n. 17 (1953). However, it does not appear that the likelihood of such matters developing is sufficient to justify the prohibition of the employment at this time. Nevertheless, the lawyer is cautioned to pay special attention to any conflicts that may develop during the proceedings. The committee's decision is also based on the fact that the two prior clients have expressly approved the corporation's employment of Lawyer A. Cf. ABA Committee on Ethics and Professional Responsibility Informal Opinions 1157 (July 10, 1970) and 1323 (April 21, 1974).

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