title, taking corrective steps for the improvement of title, certifying title to the agency, preparing description and deed,and supervising the execution of the same by the property owners to the agency. The attorney would not represent the agency in price negotiations or in condemnation proceedings in the event the agency and the property owners do not agree on price; the agency would be represented by its own general counsel in such matters. It is known that the agency proposes to acquire properties owned by present clients of the attorney, and past experience in the area indicates a strong likelihood that the prices to be offered by the agency will not be acceptable to the owners, thus necessitating condemnation proceedings. The attorney anticipates that his existing clients, the private property owners, will wish to retain him to represent them in the prospective condemnation proceedings.

OPINION

The governmental urban renewal agency is a public body and therefore cannot consent to the dual representation if there is a conflict. There would be a conflict were the attorney to do title work on a property for the agency as described and to represent a private client against the agency in condemnation proceedings involving the same property. The Committee is further of the opinion that it would be inadvisable for the attorney to represent the agency as described and also to represent private clients against the agency in condemnation proceedings even though the latter do not involve property as to which the attorney performed title work for the agency, since an attorney for a public body must avoid even the appearance of a conflict.

See the following opinions published in Opinions Of The Committee On Professional Ethics Of The Association Of The Bar Of The City Of New York and The New York County Lawyers Association, Columbia University Press, New York, 1956:

N.Y.City 70 (1926-27, p. 30)
N.Y.City 71 (1926-27, p. 30)
N.Y.City 130 (Feb. 14, 1930, p. 61)
N.Y.City 349 (Dec. 3, 1935, p. 184)
N.Y.County 350 (1939, p. 741)

See also formal opinions of The Committee on Professional Ethics Of The American Bar Association numbered 16, 34, 77 and 92.

Opinion #112-9/18/69 (13-69)

Topic: Conflict of Interest
Digest: Representation of injured child in action against insured parents
Canons: *Former Canon 6*

QUESTION

A recent opinion of the New York Court of Appeals held that a child riding in an automobile driven by its parent can sue the parent for injuries resulting from an accident. Prior to that decision it was common for lawyers in such cases to represent both the parent and the child in a suit against the owner and driver of the other vehicle involved in the accident. A lawyer who has a number of such cases pending asks whether he may ethically continue to represent both parent and child and if not whether he may represent one, and if so, which.

OPINION

In the opinion of this Committee, the change in the law effected by the Court of Appeals decision creates a clear conflict of interest between the parent and the child and it would be improper for one lawyer to represent both. When a lawyer is approached by a parent in such a case he should advise the parent at the outset of the conflict and let the parent decide which party the lawyer is to represent. The other party should then be represented by independent counsel.

The situation is more difficult where the lawyer already represented both parties when the law was changed. In such a case the lawyer will have received information from the parent on behalf of both the parent and the child. If any of this information would give an advantage or disadvantage to one party over the other, there is no way in which the lawyer can resolve the conflict and he should withdraw from the case entirely. If he does not, he will be in the position of representing a litigant suing a former client on the basis of information he received from or on behalf of such client.

On the other hand, where the information was received in the early stages of the attorney client relationship and is of a non-confidential nature which clearly gives rise to no advantage or disadvantage as between the parent and the child, the lawyer may continue in the case on the side selected by the parent.

The question is similar to that raised in Opinion 74 of this Committee dated March 28, 1968 which held that an attorney who represented the parents in an automobile accident case could not, even with the parents' consent, bring suit on behalf of the child against the parents and the manufacturer of an allegedly defective tire on the automobile.

Opinion #113-9/18/69 (20-69)

Topic: Attorney's mailing of a proposed summons to proposed defendant in subrogation tort cases; attached notice requests forwarding to defendant's insurance company.

Digest: Improper for attorney to purposefully mail document which can create the impression that judicial proceedings have been commenced.

Canons: *Former Canons 9, 29*

QUESTION

May an attorney mail a proposed summons to the proposed defendant in subrogation tort cases?

The attorney represents insurance companies for tort subrogation purposes. In these tort subrogation cases, the attorney attempts to ascertain the responsible party's liability carrier and reach a settlement as quickly as possible. The attorney has found that liability carriers tend not to settle until a summons is received. Upon receipt of a summons, liability carriers reach a settlement in 70% of the cases.