



## Committee on Professional Ethics

Opinion #256 - 9/29/72 (56-71)

Topic: Conflict of Interest;  
Dual Representation

Digest: An infant may not consent to dual representation where conflict of interest may arise.

Code\*: EC 5-15; DR 5-101 (A);  
DR 5-105.

### QUESTION

May an attorney represent both an infant driver and an infant passenger with conflicting interests in automobile accident litigation where the parents of both infants expressly consent with knowledge to such representation?

### OPINION

This question must be answered in the negative. The problem does not differ from the prohibition from representing both an infant passenger and his parent driver after an auto accident, N.Y. State 74 (1968) and N.Y. State 112 (1969) or from the prohibition from representing both an estate and a claimant against the estate even though the claim is covered by insurance. N.Y. State 205 (1971).

In many situations consent cannot be given for dual representation. N.Y. State 143 (1970). An infant cannot consent to dual representation and therefore where a conflict of interest exists, dual representation would violate DR 5-105, DR 5-101 (A), and EC 5-15. EC 5-15 provides:

"If a lawyer is requested to undertake or to continue representation of multiple clients having potentially differing interests, he must weigh carefully the possibility that his judgment may be impaired or his loyalty divided if he accepts or continues the employment. He should resolve all doubts against the propriety of the representation. A lawyer should never represent in litigation multiple clients with differing interests; and there are few situations in which he would be justified in representing in litigation multiple clients with potentially differing interests. If a lawyer accepted such employment and the interests did become actually differing, he would have to withdraw from employment with

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likelihood of resulting hardship on the clients; and for this reason it is preferable that he refuse the employment initially. On the other hand, there are many instances in which a lawyer may properly serve multiple clients having potentially differing interests in matters not involving litigation. If the interests vary only slightly, it is generally likely that the lawyer will not be subjected to an adverse influence and that he can retain his independent judgment on behalf of each client; and if the interests become differing, withdrawal is less likely to have a disruptive effect upon the causes of his clients."

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