



## Committee on Professional Ethics

Opinion #436 - 7/19/76 (42-76) Topic: Confidences of a prior client.

Digest: Law firm may not represent a wife in a matrimonial action in which the husband had been recently represented by an associate in another matter which might become relevant in the matrimonial action, without the consent of the husband.

Code: EC 4-5, 4-6, 9-2, 9-6  
DR 4-101(B)(C), 5-105(D)  
Canon 5

### QUESTION

May a law firm represent a wife in a matrimonial matter when an associate had recently represented a corporation in which the husband was the principal for the purpose of preparing a buy-sell agreement with another principal shareholder?

### OPINION

It would be improper for the law firm to represent the wife in the matrimonial matter without the consent of the husband.

Applicable to the question presented is EC 4-5 which provides in pertinent part:

"A lawyer should not use information acquired in the course of the representation of a client to the disadvantage of the client and a lawyer should not use, except with the consent of his client after full disclosure, such information for his own purposes.... Care should be exercised by a lawyer to prevent the disclosure of the confidences and secrets of one client to another, and no employment should be accepted that might require such disclosure."

The obligation of a lawyer "to preserve the confidences and secrets of the client continues after the termination of his employment". EC 4-6.

Although the associate of the law firm had been retained by the corporation, he, also, had represented, in fact, both the client's husband and the other principal. It is quite apparent that the professional services rendered by the associate, though restricted to the preparation of the contract between the corporation and its two principals, would result in the disclosure by the husband of his interest in the corporation. This confidential information, appears to be very relevant to the matrimonial action.

Clearly, the associate would be precluded from representing the client in the matrimonial matter since such representation would appear to require the use of confidential information obtained in the course of his prior representation of the husband. EC 9-6 provides in relevant part:

"Every lawyer owes a solemn duty to...strive to avoid not only professional impropriety but also the appearance of impropriety."

Directly applicable to the question presented is the following observation made in N.Y. State 410 (1975):

"Public confidence may be undermined if it appears that a lawyer could have gained useful information in the course of representing a prior client or in the appearance of a conflict of interest, even though this may not be the fact. Canon 9; EC 9-2; N.Y. State 161 (1970); N.Y. State 395 (1975)."

Moreover, even if no relevant confidential information had been obtained by the associate during his prior representation of the husband, the fact that such representation was so recent would create the appearance of a conflict of interests should he represent the client in the matrimonial action. N.Y. State 329 (1974) is directly in point. It held:

"In the event no such confidential information was obtained by reason of the former representation the lawyer may undertake the representation of the wife unless the representation of the husband was so recent that a proceeding against him would create the appearance of impropriety."

Since it would be improper for the associate of the law firm to represent the client in the matrimonial action without the consent of the husband, the firm would be precluded from continuing the representation of the client. DR 5-105(D); N.Y. State 433 (1976); N.Y. State 426 (1976) and opinions collected therein.

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