

MINUTES

COMMITTEE: Ethics Committee

DATE: May 4, 2000

6. CHAPTER 6, RULE 7: WHETHER LAWYER IS PREVENTED FROM ACTING BECAUSE OF PREVIOUS REPRESENTATION OF WITNESS BY ANOTHER LAWYER IN FIRM

A lawyer is contemplating acting for a plaintiff in an action against another lawyer for negligence. In presenting the case, the lawyer expects that he may have to cross examine a witness for the defence, Gerry, who sometime ago pled guilty to a charge under the *Mortgage Brokers Act* for misusing funds placed with the plaintiff, a mortgage broker. The lawyer expects that his cross-examination of Gerry would have to explore Gerry's creditability and potential bias as a witness.

An associate of the lawyer's firm assisted Gerry's defence counsel in the defence of the charge against Gerry under the *Mortgage Brokers Act* when that associate was an articling student at another firm. The lawyer has asked whether in view of his associate's previous involvement with Gerry, whether he is prevented from acting for the plaintiff.

The Committee was of the view that in representing the plaintiff, the lawyer would probably have to explore issues that would touch on confidential information that Gerry gave to his defence counsel in the *Mortgage Brokers Act* matter. That would place the associate at the lawyer's firm in a conflict, and that conflict would be imputed to the lawyer. For this reason, it was the Committee's view that it would be improper for the lawyer to act for the plaintiff unless the lawyer made arrangements for a counsel outside the lawyer's firm to cross-examine Gerry.

JO/jeh
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