

MINUTES

COMMITTEE: Ethics Committee

DATE: March 3, 2005

6. CHAPTER 6: WHETHER LAWYER CONSULTED ABOUT WILLS VARIATION MATTER PREVENTED FROM ACTING AGAINST CLIENT ON MATRIMONIAL MATTER

Lawyer A acts for Ms. B in matrimonial proceedings against her husband, Mr. B. In 2000 Lawyer A was consulted by Mr. B concerning a possible Wills Variation action against Mr. B's step father, but Mr. B did not retain her to commence an action. Because of their previous association Mr. B, through his counsel, has taken the position that Lawyer A has a duty not to act against him in this matter. Lawyer A asked the Ethics Committee whether she may continue to do so.

Relevant portions of Mr. B's affidavit make the following assertions in connection with his position that Lawyer A is in a conflict:

25. The Plaintiff's counsel, Lawyer A, has been a business contact for me for a number of years. Both Lawyer A and the lawyers at her firm, have worked closely with me on various real estate deals. In the year 2000, my step-father died and his Will did not leave me an inequitable share of his Estate. As a result of my concerns, I spoke with Lawyer A about my step-father's Will and talked to her about aspects regarding the Executor's conduct.
26. Lawyer A used to go out to Barriere once or twice per month to meet with clients. When she was out in Barriere, we would go for lunch, attend social functions and Lawyer A, the Plaintiff, the Plaintiff's friend and myself, would socialize. During the course of our socializing, I have spoken with Lawyer A about various issues, events, my views on certain subjects, and other matters, that you would talk to a business friend about.

It was the Committee's view that Lawyer A would not be acting in a conflict by continuing to represent Ms. B. The matter on which Mr. B consulted her in 2000 was substantially unrelated to the current matter and the Committee was unable to see that Lawyer A has any confidential information from that matter that would be relevant to the current one. Moreover, the Committee did not consider that any social or business relationship that had occurred between Lawyer A and Mr. B would disqualify her from acting, since no additional solicitor-client relationship resulted from those contacts.

JO/
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