

MINUTES

COMMITTEE: Ethics Committee

DATE: September 4, 2003

6. CHAPTER 6, RULE 7: WHETHER PAST REPRESENTATION OF AN ADVERSE PARTY BY AN ASSOCIATE CREATES A CONFLICT

Lawyer K acts for Defendant Mr. C and three of his companies in a lawsuit commenced by Ms. Z for constructive trust, quantum meruit (for work done for the companies) and spousal maintenance. The claims are based on a four year common law relationship between Mr. C and Ms. Z. Lawyer K's representation of Mr. C commenced in November 2002. Lawyer J acts for the plaintiff, Ms. Z.

Lawyer K's associate, Lawyer V, acted for Ms. Z in 1992 in proceedings against Ms. Z's husband (not Mr. C, the defendant in these proceedings) when she worked at another firm. Lawyer V's representation of Ms. Z concluded in 1992. Lawyer V took Ms. Z's file with her when she left her old firm and it is now in storage.

Lawyer K asked the Committee whether she is acting in a conflict because of Lawyer V's previous representation of Ms. Z.

The Committee noted that the following aspects of the matter may affect the issue of whether Lawyer V's knowledge must be imputed to Lawyer K:

- Lawyer K's firm never acted for Ms. Z.
- The firm itself does not have the file for Lawyer V's representation of Ms. Z.
- Lawyer V is under a duty of confidentiality with respect to any information she learned concerning Ms. Z at the time Lawyer V was counsel for her and may not disclose that information to her current firm.
- It has been over 10 years since Lawyer V acted for Ms. Z.
- The current and former matters are unrelated except that they are matrimonial type matters with a common party, Ms. Z.

Although the conflicts of one lawyer in a firm are generally imputed to other lawyers in the firm, under the circumstances of this case, it was the Committee's view that if Lawyer V has any relevant confidential information from her previous representation of Ms. Z, it was unnecessary to impute knowledge of that information to Lawyer K. For that reason, it was the Committee's view that it would be proper for Lawyer K to continue to represent the defendants in the matter.

JO/
September 2003