

# Advisory Opinion 1985-1

## FACTUAL SITUATION:

An attorney has been hired by an insurance company to defend an architectural co-op corporation that is in the trucking business from a personal injury and property damage claim arising out of an automobile accident. The corporation is defunct. While the insurance apparently provides coverage for the initial claim, there are cross-claims which, in the opinion of the attorney, are not covered by the policy. The attorney proposes to withdraw as counsel for the corporation for its failure to cooperate and, on behalf of the insurance company, bring a declaratory judgment action to declare whether there is coverage and to declare that the corporation has no coverage because of its failure to cooperate.

## QUESTION:

Does the proposed conduct give rise to a conflict of interest?

## ANALYSIS:

On first impression, a conflict of interest is clearly presented. The attorney proposes to withdraw from representing a client in an existing case and, thereafter, sue his former client on a matter definitely related to his prior representation. From the factual situation presented, however, it is apparent that the attorney has had no contact whatsoever with the corporation or any officer, director, shareholder or anyone associated with it. It can be inferred from the factual situation that the attorney is in possession of no privileged information and has had no advantage by virtue of having represented the corporation. In short, it appears that the attorney has never really represented the client except in name only.

Rule 5-105 provides that a lawyer shall not allow his independent professional judgment on his client's behalf (i.e., the corporation) to be impaired by his representation of conflict interests (i.e., the insurance company). Rule 5-107(B) provides that an attorney cannot permit a person (i.e., the insurance company) who employs the attorney to render legal services for another (i.e., the corporation) to direct or regulate the attorney's professional judgment in rendering such services.

Since the conduct described is, upon first impression, a conflict of interest, despite whether in reality it is, it would give the appearance of impropriety. Specifically, the conduct would give rise to the inference that Rules 5-105 and 5-107(B) had been violated. In the circumstances, the attorney is cautioned to avoid such an appearance and it is recommended that the insurance company retain separate counsel to prosecute the declaratory judgment action. In that way, if the attorney subsequently withdraws (for appropriate reasons) from the case, it will not be for the purpose of suing his present client.