

ETHICS OPINION

RO-93-03

[REDACTED]

QUESTION:

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"For several years I was an associate at a local law firm. During that time a plaintiff brought a case to the firm. A now partner in the firm investigated the case thoroughly, and after doing so, declined to take the case. I never had any involvement in the case nor did I ever see or touch the actual file. No suit was ever filed, from what I understand. After I left the firm, I opened a practice in a building with another attorney. Recently, the defendants' attorney died, and the attorney in my building will be handling the case for the defendants. This attorney has asked me to also work on the file, and the client is in agreement. My question is, can I work for the defendants without violating any ethical rules?"

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ANSWER:

Yes, you may participate in the representation of the defendants, even though a partner at your former law firm once reviewed the plaintiff's file and declined the case.

DISCUSSION:

The problem you raise is covered by the interplay of Rules 1.9 and 1.10. The Disciplinary Commission is likening your co-counseling arrangement with the other attorney to be employment by him rather than the client. The general rule is that when a lawyer switches firms he or she must have actual knowledge about a former client before there is any disqualification or imputed disqualification in representing a party adverse to the former client. While at your "old" firm, you neither represented the client nor gained any specific knowledge about the client according to your factual statement.

The Comment to Rule 1.10, Rules of Professional Conduct states:

"Paragraphs (b) and (c) operate to disqualify the firm only when the lawyer involved has actual knowledge of information protected by Rules 1.6 and 1.9(b). Thus, if a lawyer while with one firm acquired no knowledge of infor-

mation relating to a particular client of the firm, and that lawyer later joined another firm, neither the lawyer individually nor the second firm is disqualified from representing another client in the same or a related matter even though the interests of the two clients conflict."
(emphasis added)

Thus, under the Alabama Rules of Professional Conduct, a "moving" lawyer is only deemed to carry actual knowledge along with him/her. The new firm's situation is subject to that actual knowledge. Here, there is nothing that prevents you individually from representing this defendant. There is also no former client conflict to impute to your co-counsel.

MLM/vf

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