ADVISORY ETHICS OPINION 81-04

SYNOPSIS:

A law firm, one of whose partners once belonged to another law firm that once represented a client, may at a later date, with regard to the same subject matter, represent a different client with opposing interest to the original client, so long as the lawyer who has moved from one firm to the other, had no information, knowledge or other contact with the client whose interest will be opposed by the new law firm.

FACTS:

In August of 1978 law firm "A" while representing a corporate Lessor drafted a lease agreement whereby said corporation leased certain commercial properties to a corporate lessee. There has arisen an alleged default in the agreement and suit has been filed in Superior Court by Lessor corporation against the Lessee. Suit has been brought by the Plaintiff through its new attorney "B."

The requesting law firm "C" has been retained to represent the Defendant Lessee corporation.

An attorney from law firm "A" will shortly become a member of law firm "C" and although he himself did not participate in the drafting of this lease agreement while he was a member of law firm "A," his then firm did prepare the lease.

QUERY:

Is it proper for law firm "C" to continue to represent the Defendants in this matter.

OPINION:

A lawyer should not accept litigation against a former client, under any circumstances if such would result in a conflict of interest or disclosure of confidences of the former client.[1]

The facts presented in the request indicate that the Attorney, while a member of law firm "A" had no part in the preparation of the lease which is now the subject of litigation and had no contact with the then client of law firm "A," the corporate lessor. On these facts, the attorney while a member of law firm "A" did not possess any confidential information and could not violate any confidences or secrets of the client.

It is important that when this attorney joins law firm "C," that the law firm take steps to insure that he will not in any way participate in the defense of the Lessee in the pending litigation. The committee suggests that the safeguards employed by the Attorney General's Office in connection with prosecution of State v. Minor[2], will satisfy this obligation. In that case, upon the employment of a new Assistant Attorney General who was formerly associated with a private law firm which had represented Mr. Minor, all other members of the Attorney General's Office were instructed not to discuss at any time in any manner any case in which the former law firm or one of its partners appeared as counsel, and specifically all members were instructed not to discuss the case of State v. Minor.

The committee, however, cautions that if, while a member of law firm "A" the attorney in question was involved in or had information relating to the corporate lessor client, even if he had no direct knowledge of the lease, which is the subject of litigation, a conflict would exist and it would be improper for law firm "C" to represent the Lessee in the litigation, once the attorney transferred from law firm "A" to law firm "C."

[1] ABA Informal Opinion #885, 1965.
[2] State v. Minor, 128 Vt. 55, 258 Atlantic 2nd 815 (1969).