
Wisconsin Memorandum Ethics Opinion 8/77 A Conflict of Interest: Representing Insurance Company and Plaintiff

Revised June 25, 2020

Question: May a law firm hired on a case-by-case basis to defend an automobile liability insurance carrier represent a plaintiff against that insurance company?

Answer: If the law firm is currently representing the insurance carrier, undertaking the representation of anyone in any matter against the insurance carrier would be a directly adverse conflict of interest. SCR 20:1.7(a)(1). If the firm is asked to represent the plaintiff against the insurance company where they will not be representing both sides but have other matters for the insurance company in progress, both parties should be informed of the situation and the written and signed consent of each must be obtained before proceeding. SCR 20:1.7(b)(1-4). If the law firm is not currently representing the insurance carrier on any matter, the law firm may undertake representation of a plaintiff against the insurance carrier only if the matter is not substantially related to any prior representation of the insurance carrier. SCR 20:1.9(a).

Question: Alternatively, if a law firm is on a general retainer with the insurance company can it represent a plaintiff against that insurance company?

Answer: A “general retainer” (sometimes called an “availability retainer”) means that there is an ongoing lawyer client relationship with the insurance carrier and undertaking any matter adverse to the insurance carrier would be a conflict of interest. SCR 20:1.7(a) and (b).