
E-82-6 Multiple representation in automobile accidents

Facts

O's automobile was being driven by D, whose passengers were his wife and son. O's automobile was uninsured. The attorney represented the two passengers and obtained settlement of their claims from auto #2's insurance carrier. The two passengers also released D and O. D has a claim for personal injury and for his wife's and son's medical expenses. O has a claim for property damage to his auto. The State Bar Ethics Committee was asked if a lawyer may represent D and O, or both, in prosecuting their respective claims.

Question

May an attorney represent the driver (D) of auto #1, or the owner (O) thereof, or both, for damages sustained by them as the result of a collision with auto #2 after the attorney represented and settled the claims of two guest passengers of auto #1 arising out of the same collision with auto #2?

Opinion

A conflict of interest may arise should the attorney seek to represent both D and O in prosecuting their respective claims. Since D was driving O's automobile, O may have a cause of action against D for the damage sustained by O's automobile.

SCR 20.23 states: "A lawyer should exercise independent professional judgment on behalf of a client." SCR 20.23(3)(b) states in part:

If a lawyer is requested to undertake or to continue representation of multiple clients having potentially differing interest, he or she must weigh carefully the possibility that his or her judgment may be impaired or his or her loyalty divided if he or she accepts or continues the employment. He or she should resolve all doubts against the propriety of the representation. A lawyer should never represent in litigation multiple clients with differing interests; and there are few situations in which he or she would be justified in representing in litigation multiple clients with potentially differing interests. If a lawyer accepted such

employment and the interests did become actually differing, he or she would have to withdraw from employment with likelihood of resulting hardship on the client; and for this reason it is preferable that he or she refuse the employment initially.

With respect to the proposed representation of either D or O, but not both, there would appear to be no conflict of interest, since the attorney has successfully represented D's guests and their claims have been settled. However, the attorney must keep in mind that any confidential communications received by him from his former clients may not be revealed without consent of the clients affected and only after a full disclosure to them. SCR 20.22(2)(a).

Conclusion

1. The attorney may not represent D and O in prosecuting their respective claims.
2. The attorney may represent either D or O subject to SCR 20.22(2).