

Ethics Opinion No. 84-2

Whether an Attorney for a Partnership Can Subsequently Represent One of the Partners Against Another Partner in a Partnership Dispute.

The Ethics Committee has been asked to clarify whether or not an attorney for a partnership can subsequently represent one of the partners against another partner in a partnership dispute. This ordinarily cannot be done.

DR 4-101(B)(2) provides that a lawyer shall not knowingly during or after termination of the professional relationship, use a confidence or secret of a client to the disadvantage of the client.

The preservation of confidences and secrets of a client are essential to the attorney/client relationship and should be protected. Both the fiduciary relationship existing between lawyer and client and the proper functioning of the legal system require the preservation by the lawyer of confidences and secrets of one who has employed or sought to employ him. A client must feel free to discuss whatever he wishes with his lawyer and the lawyer must be equally free to obtain information beyond that volunteered by his client. The observance of the ethical obligation of a lawyer to hold inviolate the confidences and secrets of his client not only facilitates the full development of facts essential to proper representation of the client, but also encourages laymen to seek early legal assistance (EC 4-1).

An attorney represents the partnership interest of each individual partner of a partnership when he represents the entity of a partnership. A partnership is an association of two or more persons to carry on as co-owners as a business for profit. AS 32.05.010. If a partner has divulged his secrets and confidences to an attorney for the partnership, that confidence or secret may not be used to the disadvantage of the client. (DR 4-101(B)(2))

If there is the slightest doubt as to whether or not the acceptance of professional employment will involve a conflict of interest as between the two partners or with a former partner, or may require the use of information obtained through the services rendered to the partnership, the employment should be refused. The Alaska Supreme Court has ruled that an attorney may not represent a third party against a former client where there exists a substantial possibility that knowledge gained by the attorney in the earlier professional relationship can be used against the former client or where the subject matter of his present undertaking has a substantial relationship to that of his prior representation. The former client need show no more than that the matters embraced within the impending suit, wherein his former attorney appears on behalf of his adversary, are substantially related to the matters or

cause of action, wherein the attorney previously represented the former client. *Aleut Corp. v. McGarvey*, 573 P.2d 473 (Alaska 1978) citing *T.C. Theater Corp. v. Warner Brothers Pictures*, 113 F.Supp. 265 (S.D.N.Y. 1953). See also *Gause v. Gause*, 613 P.2d 1257 (Alaska 1980).

Therefore, an attorney for a partnership should not represent one or more of the partners against another partner in a partnership dispute where there exists a substantial possibility that knowledge gained by him in the earlier professional relationship can be used against the former client, or where the subject matter of the present undertaking has a substantial relationship to that of the prior representation of the partnership.

Adopted by the Alaska Bar Association Ethics Committee on November 22, 1983.

Approved by the Board of Governors on January 13, 1984.