



## Committee on Professional Ethics

OPINION #89-3

Topic:	Conflict of Interests
Digest:	A law firm whose practice consists of over 50% condemnations against the state, may not represent the state in certain cases.
Code:	DR 5-105(A); 5-105(B); 5-105(C); EC 5-1; 5-14

### QUESTION

MAY A LAW FIRM WHICH DEALS IN CONDEMNATION AND TAX CERTIORARI MATTERS, 50% OF WHOSE CONDEMNATIONS ARE AGAINST THE STATE OF NEW YORK CONCURRENTLY REPRESENT THE STATE OF NEW YORK IN "DE FACTO TAKING" OR PROPERTY DAMAGE CLAIMS?

### OPINION

In the situation presented, 50% of the firm's work is devoted to representation of clients against the State of New York.

However, the firm has recently been consulted by an insurer for the State of New York and requested to represent the State in "de facto taking" and property damage claims.

EC 5-1 provides: "The professional judgment of a lawyer should be exercised, within the bounds of the law, solely for the benefit of his client and free of compromising influences and loyalties. Neither his personal interests, the interests of other clients, nor the desires of third persons should be permitted to dilute his loyalty to his client."

EC 5-14 provides: "Maintaining the independence of professional judgment required of a lawyer precludes his acceptance or continuation of employment that will adversely affect his judgment on behalf of or dilute his loyalty to a client. This problem arises whenever a lawyer is asked to represent two or more clients who may have differing interests, whether such interests be conflicting, inconsistent, diverse, or otherwise discordant."

It is clear that without the consent of New York State and of all clients for whom the attorney is litigating against the State, the attorney may not accept a retainer to defend the State, even though he is being paid by the insurance carrier, while at the same time he is litigating for clients against the State.

DR 5-105(A) provides: "a lawyer shall decline proffered employment if the exercise of his

independent professional judgment in behalf of the client will be or is likely to be adversely affected by the acceptance of the proffered employment, except to the extent permitted under DR 5-105(C).”

DR 5-105(C) provides: “in the situations covered by DR 5-105(A) and (B), a lawyer may represent multiple clients if it is obvious that he can adequately represent the interests of each and if each consent to the representation after full disclosure of the possible effect of such representation on the exercise of his independent professional judgment on behalf of each.”

As the public interest is involved, the State is unable to give consent, and so we need not consider whether the attorney could properly accept the retainer with the consent of the State and of the clients for whom he is suing the State.

Accordingly, an attorney may not be retained by an insurance carrier to defend the State and at the same time maintain actions against the same State.

### **CONCLUSION**

For the reasons hereafter stated, the question posed is answered in the negative.

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