
Professional Responsibility

Elon University School of Law

Eric M. Fink

Problems: Conflicts of Interest

1. Partner, a partner in Firm, represents A in employment discrimination suit against B Corp.
 - a. May another lawyer at Firm represent B Corp. in that case?
 - b. What if Firm has 1000 lawyers in offices throughout the US and abroad. Partner works in the NY office. May Associate in London office – who has never met nor communicated with Partner – represent B Corp?
2. Lawyer represents A in personal injury suit against B. Absent informed consent of both clients, may Lawyer represent any of the following:
 - a. C in purchase of A's house
 - b. D in formation of partnership with A
 - c. E in unrelated contract suit against A
 - d. B in case of A v. B
 - e. Which, if any, of these conflicts are waivable?
3. In 2000, Lawyer represented A in negotiation of employment contract with ABC Corp. During that representation, Lawyer became familiar with A's financial assets. The representation concluded in 2001 and lawyer has not represented A since then. In 2010, may Lawyer represent:
 - a. C in a personal injury case against A
 - b. H in a divorce against A
 - c. ABC Corp. in an employment discrimination suit filed by A
 - d. Which, if any, of these conflicts are waivable by A?

4. Five years ago, Attorney represented Seller in the sale of Seller's home. Attorney has not represented Seller since that time. Seller's business partner has asked Attorney to represent him in a dispute over the dissolution of the business partnership. May Attorney represent Partner against Seller?
 - a. No, because the representation is directly adverse to Attorney's former client
 - b. No, unless at the time of the sale of Seller's home, Seller agreed that Attorney would not subsequently be precluded from representing other clients against Seller
 - c. Yes, because the partnership dissolution is unrelated to the sale of Seller's home
 - d. Yes, unless Seller sold the home while in the partnership with Partner.
5. A, B, & C are charged with armed robbery of a liquor store. A & B met together with Attorney and asked Attorney to represent them both. Attorney interviewed A & B separately. Each told Attorney that C had committed the robbery while A & B sat outside the store, that C told them he was going in to buy a bottle of whisky, and that they had no idea C was going to rob the store.
 - a. May Attorney represent both A & B?
 - b. One week before trial, A tells Attorney he wanted a plea bargain, and that he was willing to testify that B loaned C the gun used in the robbery. What must Attorney do?
6. A & B decide to form a limited partnership. A will contribute 100% of the cash, and B will devote 100% of his time to the partnership. They ask Attorney to represent them both in drafting the partnership agreement and filing the necessary paperwork with the state. May Attorney do so?
7. Attorney prepared a will for Client and acted as one of the subscribing witnesses to the will. The will left everything to Client's son. Later, at Client's request, Attorney prepared a new will for Client, this time leaving half of Client's estate to Son and half for Client's butler. Client died, and the Butler sought to collect half the estate under the second will. Son, who believes the second will is the product of fraud and undue influence, asks Attorney to represent him in an action challenging its validity. May Attorney do so?

8. Attorney represents A, who was fired as in-house counsel for 123 Corp., in an appeal of A's lawsuit against his former employer. The issue on appeal is whether an in-house lawyer may assert a claim for wrongful discharge against her employer-client. Meanwhile, XYZ Corp. has asked Attorney to represent it in a pending appeal of a suit brought against XYZ by B; that suit involves the same legal issue, but in this case Attorney would be arguing the opposite legal position.
 - a. May Attorney represent both A and XYZ in their respective appeals, if both cases are before the NC Court of Appeals?
 - b. What if A's case is before the NC Court of Appeals, and XYZ's case is before the Virginia Supreme Court?
 - c. Assuming Attorney is disqualified from representing XYZ, may another lawyer in Attorney's firm represent XYZ in its appeal?
9. Attorney A currently represents Builder, a building contractor who is the plaintiff in a suit to recover for breach of contract to build a house. Builder also has pending before the zoning commission a petition to rezone property Builder owns. Builder is represented by Attorney B in the zoning matter. Neighbor, who owns property adjoining that of Builder, has asked Attorney A to represent Neighbor in opposing Builder's petition for rezoning.
 - a. May Attorney A represent Neighbor?
 - b. If Attorney A is disqualified from representing Neighbor, may Attorney A refer the matter to one of her partners or associates?
10. Between 1999 and 2002, Attorney represented Husband and Wife on three simple real estate transactions. During these matters, Wife disclosed no confidential information to Attorney. Attorney has not represented Husband or Wife since 2002. In 2007, Husband asks Attorney to represent him in a divorce action against Wife.
 - a. May Attorney represent Husband?
 - b. Would your answer change if the divorce arose in 2003, a few weeks after the completion of the third real estate transaction?
11. The Smith family (mother, father, three adult children, and son-in-law) visit Lawyer for estate planning advice. Each family member needs a new will. All family members are in accord with regard to the distribution of the family's assets. May Lawyer write wills for all of them?

12. Lawyer, a partner with the Jones Law Firm, is retained by Allstate Insurance Company to represent one of its policyholders (B), who was involved in an auto accident with C. Lawyer will be paid by Allstate.
 - a. Who does Lawyer represent?
 - b. During the representation, B admits that he was drinking just before the accident. B asks Lawyer not to disclose this information to Allstate. What are Lawyer's ethical obligations?
 - c. May Allstate use its in-house lawyers to represent its policyholders?
13. Alice, plaintiff, is suing Bert and Charlie, defendants, for slip and fall. Bert is represented by Lawyer A. Bert intends to argue that the fall resulted from Alice's own negligence and, in any event, the staircase on which Alice fell is owned by Charlie. Recently, Charlie has asked Lawyer A to represent him as well. May Lawyer A do so?
14. Wanda, a partner in the Smith Law Firm, represents A in the case of A v. B. B asks Howard, who is a partner in the Jones Law Firm and Wanda's spouse, to represent B in the litigation.
 - a. Absent informed consent of both clients, may Howard represent B?
 - b. If not, may Howard refer B to one of his partners/associates?
15. From 1999-2003, Lawyer was a partner at the Smith Law Firm. During that time, the Smith Law Firm represented A in A v. B. Lawyer played no role in the case and had no information about it. B is represented by the Jones Law Firm. While the case of A v. B was still pending, Lawyer left the Smith Law Firm and joined the Jones Law Firm. May Lawyer represent B in A v. B?
16. From 1999-2003, Lawyer was a partner at the Smith Law Firm. During that time, the Smith Law Firm represented A in A v. B. Lawyer was the lead trial attorney in the case. B is represented by the Jones Law Firm. While the case of A v. B was still pending, Lawyer left the Smith Law Firm and joined the Jones Law Firm.
 - a. May Lawyer represent B in A v. B?
 - b. May the Jones Law Firm continue to represent B in A v. B?

17. L is a partner in the Smith Law Firm. While at the Smith Law Firm, L represents P in a contract action against D. L leaves the Smith Law Firm and joins the Jones Law Firm. L takes P (and P's case against D) with him to the Jones Law Firm. The Smith Law Firm no longer represents P in any matter.
 - a. May the Smith Law Firm now represent D in her action against P?
 - b. May the Smith Law Firm represent X in an unrelated case against P?
18. Law Firm has offices in cities around the US, including Raleigh and Atlanta. Law Firm's Raleigh office represents XYZ Company in a case in NC state court against ABC Company. Law Firm's Atlanta office has been asked by ABC Company to represent it in a wholly unrelated case in Georgia state court. May Law Firm do so?
19. Law Firm's Greensboro office is defending XYZ Company through its liability insurer, Vesuvius Insurance Company (which is neither a party to the suit nor Law Firm's client). Law Firm's Atlanta office has been asked to sue another insured of Vesuvius Insurance Company in a wholly unrelated case. May Law Firm do so?