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Informal Opinion 07-10

**Conflict Of Interest: Joint Representation Of Rental Car Agency  
And Driver Of Rental Car**

The driver of a rental car and the self-insured rental car agency that owned and rented the car are co-defendants. The question is whether the same lawyer may represent both defendants under the circumstances described below. In our opinion, the answer is “no” unless concurrent representation is permitted under Rule 1.7b and the lawyer obtains informed consent confirmed in writing from each affected client.

We have been asked to make two assumptions: first, that under federal law, rental car agencies, in the absence of their own criminal or negligent conduct, are not vicariously liable for damages caused by drivers to whom they rent cars, and second, that the rental car agency will instruct the lawyer to file a motion to strike the claim based on the federal law, which, if successful, would leave the driver as the sole defendant.

Multiple parties seek joint representation for a variety of reasons. In litigation, hiring a single lawyer will almost always result in a significant reduction in legal costs, and joint representation also offers the best opportunity for coordinating litigation strategy. This saves attorney’s fees and promotes a less adversarial atmosphere among parties who decide their interests are largely harmonious. Despite the advantages of one lawyer representing multiple clients, there are risks to the clients that must be considered and evaluated, even if the clients do not recognize them immediately.

For example, one of the fundamental principles underlying the Rules of Professional Conduct is the lawyer’s loyalty to a client; completely undivided loyalty to a client is not possible where there are competing obligations and loyalties to other clients, a situation that the Rules refer to concurrent conflicts of interest. Rule 1.7(a) forbids concurrent conflicts of interest unless each of the conditions described in 1.7(b) is met. Joint representation of the rental car agency and the driver of the rental car would create a concurrent conflict of interest. Some rental cars are

defective. Sometimes car rental agencies rent cars to people to whom they should not have. A lawyer representing the driver should be free to consider and to investigate whether the car rental agency engaged in criminal or negligent conduct. The facts we have been asked to assume do not include the possibility of an assertion of a claim by one client against the other. Nonetheless, there is a 1.7(a) conflict because the successful assertion of a defense on behalf of the self-insured rental car agency would leave the driver as the sole defendant, making the driver the sole source of a potential settlement or solely liable in the event of plaintiff's verdict or judgment.

Whether, notwithstanding the conflict, concurrent representation may be permissible under Rule 1.7(b) depends on the facts, which often change during the course of litigation. Concurrent representation that appears permissible under Rule 1.7(b) and that is acceptable to the clients at the outset can become burdened by conflicts as new information becomes available, a possibility that one should fully discuss with potential clients from whom conflict waivers are requested.

In conclusion, under the facts we have been asked to assume the lawyer must either decline the concurrent representation, or assume the responsibility of analyzing whether concurrent representation is permissible under Rule 1.7(b), and if it is, go through the process of requesting from each potential client "informed consent" "confirmed in writing" as defined in the Terminology Section of the Rules.

THE COMMITTEE ON PROFESSIONAL ETHICS

By Wick R. Chambers

Wick R. Chambers, Chair