

**Opinion 298**  
**May 1965**  
**18 Baylor L. Rev. 364 (1966)**

**CONFLICT OF INTERESTS - SUING A CLIENT WHILE REPRESENTING HIM IN ANOTHER CASE**

It is unethical for an attorney employed by an insurer, while defending the defendant (under a non-waiver agreement) in a suit for damages resulting from a collision, to file a separate suit on behalf of the insurer against the insured for a judgment declaring that the policy was canceled prior to the collision.

**QUESTION**

A is sued by B for damages resulting from an automobile accident. A makes demand upon C, an insurance company which had issued to A a standard automobile liability policy of insurance, to defend him (A) in accordance with the terms of said policy. C contends that it had canceled its policy prior to the occurrence of the accident. A denies knowledge of the purported cancellation. C nevertheless agrees to defend the suit subject to a Non-waiver Agreement.

C delivers the citation and petition served upon A to an attorney who regularly represents C. Pursuant to the instructions of C, the attorney files an answer in behalf of A. Then, in further pursuance of C's instructions, the attorney files a separate Suit in behalf of C against A and B for a declaratory judgment to resolve the rights of the parties under the contract of insurance (i.e. whether or not the policy was canceled prior to the accident between A and B).

Does the attorney violate Canon 6 by defending A in the damage suit and suing A in the declaratory judgment suit?

**OPINION**

Yes. When the attorney, on behalf of C, sued A for declaratory judgment, an attorney-client relationship existed between the attorney and A in the damage suit. See Opinion 179 (June 1958). Canon 6 condemns representation of conflicting interests. In a split decision, this committee has held that where an attorney's employment is limited to one case, it would not be improper for him to accept employment against his client in another case, provided the second case is wholly unrelated in subject matter to the first, there has been a full disclosure of the facts, and the attorney has acquired no knowledge of the second case through his relationship in the first case; but the committee "looked with misgivings" upon such action. Opinion 123 (January 1956). In some other states, a lawyer is not permitted to represent a client in one case and sue him in another. *Grievance Committee v. Rottner*, 203 A. 2d 82 (Cone. 1964); New York County Opinion 279; New York Lawyers' Assn. Opinion 350. It has been suggested that exceptions should be made where there is a scarcity of available counsel by reason of geographical distribution or high specialization. See Casenote, 43 Tex. Law Rev. 585.

In the present inquiry, since it is unlikely that any communication from A to his attorney in the first suit could be involved to A's detriment in the second suit, we assume that there is no betrayal of confidential information. We further assume that the attorney has made "full disclosure of the facts," although disclosure that he is being sued by his attorney would seem to be small consolation to A since he did not select the attorney in the first place and could not discharge him without assuming responsibility for defense of the damage suit.

It does not appear to us that the subject matters of the two suits are wholly unrelated. Ultimate liability for damages resulting from the collision is involved in both cases. Although the attorney's two clients, A and C, have a common interest in defending the damage suit, their interests in the declaratory judgment case are in direct conflict, and the outcome of that case will determine whether A or C will finally pay the damages, if any, awarded in the first suit. Furthermore, A's bargaining position with the plaintiff B could be weakened by B's knowledge that A's attorney in the damage suit is suing A and B in the second suit and therefore is not wholly committed to A. In addition, conclusion of the second suit in C's favor prior to disposition of the damage suit could result in the attorney's withdrawal, thus requiring A to employ new counsel in the course of litigation. Finally, laymen generally "look with misgivings" upon a lawyer's representing a client in one case and suing him in another; and in the absence of a public-policy reason for making an exception, conduct of an attorney which causes public disfavor should not be condoned. The majority of the committee are of the opinion that Canon 6 is violated. (7-1.)