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IN THE SUPREME COURT OF THE STATE OF NEVADA

PARDEE HOMES OF NEVADA, Appellant, vs. JAMES WOLFRAM; and ANGELA L. LIMBOCKER-WILKES as trustee of the WALTER D. WILKES AND ANGELA L. LIMBOCKER-WILKES LIVING TRUST, Respondents.	**Case No.: 72371** Eighth Judicial District Court Case No.: A-10-632338-C **RESPONDENTS' ERRATA TO RESPONDENTS' MOTION FOR SANCTIONS**

COME NOW, Respondents, JAMES WOLFRAM and ANGELA L. LIMBOCKER-WILKES, as Trustee of the WALTER AND ANGELA L. LIMBOCKER WILKES LIVING TRUST (collectively, "Respondents"), by and through their counsel of record, James J. Jimmerson, Esq. and James M. Jimmerson, Esq., of The Jimmerson Law Firm, P.C., and hereby submit Respondents' Errata to Respondents' Motion for Sanctions.

Respondents' Motion for Sanctions (the "Motion") referenced seven (7) exhibits that were submitted with the Motion to this Court. Respondents

inadvertently omitted attaching Exhibit 4 to the Motion, the ABA Formal Opinion 93-377 dated October 16, 1993. It is attached hereto.

Dated this 10th day of July, 2018.

THE JIMMERSON LAW FIRM, P.C.

By: */s/ James M. Jimmerson, Esq.*
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of The Jimmerson Law Firm, P.C. and that on the 10th day of July, 2018, a true and correct copy of the foregoing **RESPONDENTS' ERRATA TO RESPONDENTS' MOTION FOR SANCTIONS** was e-filed and e-served on all registered parties to the Supreme Court's electronic filing system, which will provide copies to all counsel of record registered to receive such electronic notification on the following:

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EXHIBIT 4

EXHIBIT 4

AMERICAN BAR ASSOCIATION
STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY

Formal Opinion 93-377 **October 16, 1993**
Positional Conflicts

When a lawyer is asked to advocate a position with respect to a substantive legal issue that is directly contrary to the position being urged by the lawyer (or the lawyer's firm) on behalf of another client in a different and unrelated pending matter which is being litigated in the same jurisdiction, the lawyer, in the absence of consent by both clients after full disclosure, should refuse to accept the second representation if there is a substantial risk that the lawyer's advocacy on behalf of one client will create a legal precedent which is likely to materially undercut the legal position being urged on behalf of the other client. If the two matters are not being litigated in the same jurisdiction and there is no substantial risk that either representation will be adversely affect by the other, the lawyer may proceed with both representations.

The Committee has been asked to address the question whether a lawyer can represent a client with respect to a substantive legal issue when the lawyer knows that the client's position on that issue is directly contrary to the position being urged by the lawyer (or the lawyer's firm) on behalf of another client in a different, and unrelated, pending matter.[1]

At the outset, it should be noted that the second paragraph of the Comment to Rule 1.9 of the Model Rules of Professional Conduct (1983, amended 1993) specifically states that

> a lawyer who recurrently handled a type of problem for a former client is not precluded from later representing another client in a wholly distinct problem of that type even though the subsequent representation involves a position adverse to the prior client.[2]

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1. For purposes of this Opinion, the Committee assumes that the issue on which conflicting positions are to be taken is one of substantive law. Although procedural, discovery and evidentiary issues could in some circumstances raise the same problem as is here addressed, such issues almost invariably turn on their particular facts, and it is therefore rare that such issues will give rise to the type of conflict problem that is the subject of this Opinion.

2. The exceptions implied by the Comment's reference to a "type" of problem would include circumstances where the matter is the same as the one in which the lawyer represented the former client, or where confidences of the former client may be susceptible to misuse. See Model Rules 1.9(a) and 1.9(c)(1).

On the other hand, arguing a position on behalf of one client that is adverse to a position that the lawyer, or her firm, is arguing on behalf of another current client raises a number of concerns. For example, if both cases are being argued in the same court, will the impact of the lawyer's advocacy be diluted in the eyes of the judge(s)? Will the first decision rendered be persuasive (or even binding) precedent with respect to the other case, thus impairing the lawyer's effectiveness--and, if so, can the lawyer (or firm) avoid favoring one client over the other in the "race" to be first? And will one or the other of the clients become concerned that the law firm it has employed may have divided loyalties?

What, then, should a lawyer do when confronted with such a "positional conflict"?

To answer this question, we must look to Model Rule 1.7, which states:

(a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:
  (1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and
  (2) each client consents after consultation.

(b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:
  (1)the lawyer reasonably believes the representation will not be adversely affected; and
  (2)the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

These provisions are supplemented by a Comment that recognizes (but does not resolve) the issue addressed here:

> A lawyer may represent parties having antagonistic positions on a legal question that has arisen in different cases, unless representation of either client would be adversely affected. Thus, it is ordinarily not improper to assert such positions in cases pending in different trial courts, but it may be improper to do so in cases pending at the same time in an appellate court.[3] (emphasis added)

The rationale of the last clause is not clear, but it may stem from the view that a ruling in one of the two appellate cases would in all likelihood constitute binding precedent with respect to the second case, under the doctrine of

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3. The Comment also states that "loyalty to a client" is impaired
> when a lawyer cannot consider, recommend or carry out an appropriate course of action for the client because of the lawyer's other responsibilities or interests. The conflict in effect forecloses alternatives that would otherwise be available to the client.

stare decisis, and it would therefore be highly unlikely that the lawyer would be able to win both cases. Conversely, if there is a likelihood that the lawyer can win both cases--as, for example, where the two cases are "pending in different trial courts" or before different trial judges in the same judicial district--there is no ethical reason why the lawyer should not proceed.

Whether this be the rationale or not, the Committee does not believe that a distinction should be drawn between appellate and trial courts in this regard. After all, the impact of an appellate court decision on the second case would be the same even if the second case were still before the trial court in that particular jurisdiction. Moreover, even if both cases were in the trial court, but assigned to different judges, the decision in the first-decided case would, in all likelihood, carry at least some precedential or persuasive weight in the second case. And if both cases should happen to end up before the same judge, the situation would be even worse. For although judges well understand that lawyers, at various stages of their careers, can find themselves arguing different sides of the same issue, the persuasiveness and credibility of the lawyer's arguments in at least one of the two pending matters would quite possibly be lessened, consciously or subconsciously, in the mind of the judge.

The Committee is therefore of the opinion that if the two matters are being litigated in the same jurisdiction, and there is a substantial risk that the law firm's representation of one client will create a legal precedent, even if not binding, which is likely materially to undercut the legal position being urged on behalf of the other client, the lawyer should either refuse to accept the second representation or (if otherwise permissible) withdraw from the first, unless both clients consent after full disclosure of the potential ramifications of the lawyer continuing to handle both matters.[4]

If, on the other hand, the two matters will not be litigated in the same jurisdiction, the lawyer should nevertheless attempt to determine fairly and objectively whether the effectiveness of her representation of either client will be materially limited by the lawyer's (or her firm's) representation of the other. In addressing that key issue, the lawyer may usefully consider the following questions:

(a) Is the issue one of such importance that its determination is likely

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4. Where there is such a conflict between separate representations, in the Committee's view the provision of Rule 1.7 that is potentially applicable is not paragraph (a), but paragraph (b). The former, in referring to a representation that is "directly adverse" to another client, contemplates litigating, or maintaining a position, in a given matter, on behalf of one client against a person or entity which is a client of the lawyer (or her firm) in another matter. The test under paragraph (b), on the other hand, is whether the representation of a client in one matter may be "materially limited" by the lawyer's responsibilities to another client in another matter, and the Committee views the impairment of a representation as a material limitation within the meaning of that paragraph.

to affect the ultimate outcome of at least one of the cases?

(b) Is the determination of the issue in one case likely to have a significant impact on the determination of that issue in the other case? (For example, does the issue involve a new or evolving area of the law, where the first case decided may be regarded as persuasive authority by other courts, regardless of their geographical location? Or: is the issue one of federal law, where the decision by one federal judge will be given respectful consideration by another federal judge, even though they are not in the same district or state?)

(c)Will there be any inclination by the lawyer, or her firm, to "soft-pedal" or de-emphasize certain arguments or issues--which otherwise would be vigorously pursued--so as to avoid impacting the other case?

(d)Will there be any inclination within the firm to alter any arguments for one, or both clients, so that the firm's position in the two cases can be reconciled--and, if so, could that redound to the detriment of one of the clients?

If the lawyer concludes that the issue is of such importance and that its determination in one case is likely to have a significant impact on its determination in the second case, thus impairing the lawyer's effectiveness--or if the lawyer concludes that, because of the dual representation, there will be an inclination by the firm either to "soft-pedal" the issue or to alter the firm's arguments on behalf of one or both clients, thus again impairing the lawyer's effectiveness--the lawyer should not accept the second representation. The reason is that, in such a situation, the representation of at least one client would be adversely affected if the firm were to proceed with both.[5]

If, on the other hand, even though there is a significant potential for the representation of one client to be limited by the representation of the other, the lawyer nonetheless reasonably believes that the determination in one case will not have a significant impact on the determination of that issue in the second case and that continuing to handle both matters will not cause her, or her firm, to "soft-pedal" the issue or to alter any arguments that otherwise would have been made, the lawyer may proceed with both representations, provided that both clients consent after full disclosure has been made to them of the potential ramifications (including the possibility that the law firm's adversary in one case might become aware, and be able to make advantageous use, of the briefs filed by the law firm in the other case).

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5. See Fiandaca v. Cunningham, 827 F.2d 825, 829 (1st Cir.1987), where the First Circuit held that, under New Hampshire Rule 1.7 and the Comment thereto (which are based on Model Rule 1.7 and Comment), a law firm has an ethical duty to prevent its loyalties to other clients from coloring its representation of the plaintiffs in this action and from infringing upon the exercise of its professional judgment and responsibility.

Moreover, in such a situation it would seem clear that the law firm will not be able to provide the clients with the "competent representation" required by Rule 1.1.

Although the foregoing discussion is predicated on the assumption that the existence of the positional conflict is immediately apparent to the lawyer at the time she is asked to represent the second client, the Committee is of the opinion that the same analysis should be followed if such a conflict emerges after the second representation has been accepted and pursued. If that analysis leads to the conclusion that the law firm should not proceed with both representations, then the law firm must withdraw from one of them.[6]

Finally, although this Opinion began with a consideration of the provisions of the Model Rules, the Committee is of the opinion that the above-stated conclusions also hold true under the Model Code of Professional Responsibility (1969, amended 1980). Disciplinary Rule 5-105(A) states that a lawyer

> shall decline preferred employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment, or if it would be likely to involve him in representing adverse interests. (emphasis added)

Disciplinary Rule 5-105(C) provides that a lawyer may represent multiple clients if it is obvious that he can adequately represent the interest of each and if each consents 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. (emphasis added)

Hence, insofar as the issue here being considered is concerned, the result should be the same under the Model Code as under the Model Rules.

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6. If possible, the lawyer should determine which of the representations would suffer the least harm as a consequence of the lawyer's withdrawal and then withdraw from that matter.