

Withdrawal As Counsel When A Lawyer Becomes A Witness

Ethics Committee Advisory Opinion

10/23/81

The following is an Advisory Opinion addressed solely to the inquiring attorney.

HYPOTHETICAL:

Attorney A is an associate of Law Firm X. During their association Attorney A handled many files, including that of Client B in a civil matter which is still pending. Attorney A spent considerable time on the case of Client B which was billed to the client on an hourly rate basis, as was normal office procedure.

Before the bills were fully paid by Client B, Attorney A left Firm X to open his own office. Firm X has withdrawn from the civil matter in question, which Attorney A continues to handle at his own office for Client B. Client B now disputes a substantial amount of the charges by Firm X. Client B has retained Attorney A to handle the disputed charges as against Firm X even though Attorney A was largely responsible for the work at Firm X which resulted in the charges to Client B. Furthermore, it would be necessary for Attorney A to testify concerning the amount of the bills, should the matter proceed to any type of hearing.

QUESTION:

Is there any ethical problem with Attorney A handling this matter for Client B, either:

- 1) in a legal action;
- 2) in front of a fee dispute panel.

The Committee has reviewed your inquiry and in the opinion of the Committee an ethical problem does exist and the attorney in question should not represent the client in question.

We refer you to Canon 5 and DR 5-102, which cover your situation and which are the basis of the Committee's opinion.