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NEW HAMPSHIRE BAR ASSOCIATION
Ethics Committee Advisory Opinion
Representation Against Former Client

October 1978

INFORMAL OPINION

ADOPTED BY COMMITTEE: MARCH 10, 1979
December 8, 1976
Revised October 1978

TITLE: Representing Against Former Client

QUESTION: May an attorney represent a client against her spouse in a tort action growing out of an automobile accident where the attorney represented both the client and her spouse in an earlier action against a third party growing out of the same accident?

OPINION: In any case where an attorney contemplates taking an action against a former client serious questions of conflict of interest and breach of attorney-client relationship may arise. The question raised here represents a clear conflict of interest between the attorney and the former client, here a spouse of the client. Obviously the attorney has had access to much information from the former client within the attorney-client relationship he formerly had. Consequently, after the disposal of the initial claim, the attorney should not accept representation of the passenger against the driver, his former client, in a tort action arising out of the same accident. Further while it is not in itself improper to represent both a driver and a passenger against a third party in a tort action, the matter of conflicts between the two clients should be carefully considered prior to accepting representation of both, even when they are husband and wife.