

Ethics Opinion

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QUESTIONS PRESENTED in reference to *Lorash v. Epstein* [this opinion was rendered on the facts giving rise to the decision of the Montana Supreme Court in *Lorash v. Epstein*, 236 Mont. 21, 767 P.2d 1335 (1989)]:

1. May a prosecuting attorney represent a client in civil matters when the prosecuting attorney is investigating the possibility of filing criminal charges against the client?
2. If the answer to the above is yes, is it a violation of any ethical obligation to refuse representation?
3. Does the attorney have a duty or obligation following the preparation and filing of a mechanics lien, and notification of the applicable statute of limitation, to continue to represent the lien claimant? To affirmatively seek out the former client and advise the filing of a case?
4. Where does representation cease?

ANSWERS:

1. No.
2. No.
3. No.
4. Representation ends when the attorney files the lien and notifies the client of the statute of limitations.

ANALYSIS:

1. "Loyalty is the essential element in the lawyer's relationship to a client." (Model Rule 1.7 -- hereinafter MR, see Comment No. 1.) The requirement of loyalty dictates that a lawyer cannot simultaneously represent a client and act as his adversary, even in unrelated matters. (See generally, MR 1.7 - Conflict of Interest.)
2. Since the answer to No. 1 is "no", this question need not be discussed. But, assuming the partner may withdraw, it is not an ethical violation to refuse representation. A lawyer may refuse to represent a client unless ordered to do so by a tribunal. If the lawyer may withdraw (assuming a lawyer-client relationship exists) the lawyer must take reasonable steps to protect a client's interest. (See generally, MR 1.16.)
3. At some point, the representation must end. If the rule were otherwise, a lawyer would have to monitor a client's activities for the rest of the client's life. There would be no such individual as the "former client."
4. An attorney is not bound to seek out a client and continually remind him to keep his affairs in order.

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