

**THE PROFESSIONAL ETHICS COMMITTEE
FOR THE STATE BAR OF TEXAS
Opinion No. 659**

July 2016

QUESTION PRESENTED

May a Texas lawyer represent one insured in settling a claim and later represent that client's insurance company in defending another insured's claim that arises out of the same incident?

STATEMENT OF FACTS

A and B are involved in an automobile accident. Each has a policy issued by the same insurance company. A's liability policy has a coverage limit of \$30,000. B has both liability coverage and uninsured/under-insured (UM/UIM) coverage.

B sued A. A's lawyer, provided by the insurance company, litigated the case and eventually settled B's claim against A for the full \$30,000 limit of A's policy.

B also sought additional recovery under her own policy's UM/UIM coverage, which the insurance company denied. In B's lawsuit against the insurance company, the lawyer who represented A now represents the insurance company. The insurance company's position in B's lawsuit is that the \$30,000 that B collected under A's policy was sufficient to cover all of B's damages in the accident.

DISCUSSION

Rule 1.06 of the Texas Disciplinary Rules of Professional Conduct is the general rule regarding conflicts of interest. Subject to exceptions not relevant here, Rule 1.06(b)(1) precludes a lawyer from representing a person if the representation of that person "involves a substantially related matter in which that person's interests are materially and directly adverse to the interests of another client of the lawyer or the lawyer's firm[.]" In similar fashion, Rule 1.09 precludes a lawyer from representing another person in a matter adverse to a former client in certain situations as set out in the Rule.

Here, the lawyer's representation of the insurance company in defending B's suit regarding UM/UIM coverage is substantially related to the lawyer's representation of A in defending and settling B's suit against A regarding the accident. There is no adversity, however, between the insurance company's present interest and A's earlier interest. In these circumstances, both clients' interests are adverse to B, but not to each other. Thus,

neither Rule 1.06 nor Rule 1.09 is implicated by the lawyer's defending the insurance company in B's lawsuit.

CONCLUSION

Under the Texas Disciplinary Rules of Professional Conduct, a lawyer may represent one insured client in settling a claim against that client and represent the client's insurance company in defending another insured's claim against the insurance company that arises out of the same incident because, in that circumstance, there is no conflict between the lawyer's two clients as their interests are not adverse.