

THE ATTORNEY-CLIENT RELATIONSHIP – NONWAIVABLE CONFLICTS OF INTEREST

DATE: November 17, 2008

Question Presented

Are there conflict-of-interest situations that the Iowa Rules of Professional Conduct will not allow to be waived?

Short Answer

There are a number of situations where a conflict of interest is considered “nonconsentable” under the Iowa Rules of Professional Conduct.

Discussion

Typically, clients may give their attorney informed consent in writing to allow representation where there is a conflict of interest present if the attorney 1) reasonably believes he can provide competent and diligent representation, 2) the representation is not prohibited by law, 3) the representation does not involved the assertion by one client against another client, both of whom are represented by the same attorney, and 4) informed consent is given by each affected party in writing. Iowa R. Prof. Conduct 32:1.7 (2002).

“Consentability is typically determined by considering whether the interests of the clients will be adequately protected if the clients are permitted to give their informed consent. . . .” Model R. Prof. Conduct 1.7 cmt. 15 (2004). If the attorney reasonably concludes that he will be unable to provide competent and diligent representation to the client, then that representation is prohibited. Iowa R. Prof. Conduct 32:1.7 cmt. 15 (2002).

Another situation that gives rise to a nonconsentable conflict of interest is one where two clients represented by the same attorney are opposed to one another in litigation. Iowa R. Prof. Conduct 32:1.7 cmt. 17 (2002). An example of such a situation is where the lawyer has been

asked to represent both sides in dissolution of marriage. Iowa R. Prof. Conduct 32:1.7 cmt. 17 (2002).

In the commentary to Rule 1.7 of the Michigan Rules of Professional Conduct, a conflict is nonconsentable when a disinterested attorney would conclude that the client should not consent to the representation under the circumstances. Mich. R. Prof. Conduct 1.7 cmt. 5 (2002).