Opinion 86-7
August 29, 1986

Topic: Independent Professional Judgment. Financial Interest

Digest: A lawyer shall not sign a confession or judgment on behalf of a defendant when the lawyer's partner or associate represents the plaintiff.

Ref: Rules 5-101(a) and 5-105(a), (c), (d)

FACTS
The inquiring attorney seeks to determine whether an attorney of the same firm as the plaintiff's attorney can sign a confession of judgment on behalf of a defendant.

QUESTION
Can an attorney, on behalf of a defendant, sign a confession of judgment when the plaintiff's attorney is of the same firm as the defendant's attorney?

OPINION
When a lawyer is receiving fees for services rendered on behalf of one client which will be paid pursuant to a confession of judgment signed by a lawyer who is a member of his same firm, a conflict arises. Obviously, the attorney cannot adequately represent the interests of both.
Rule 5-105 provides in part:

(a) A lawyer shall decline proffered employment if the exercise of his independent professional judgment in behalf of his client will be or is likely to be adversely affected by the acceptance of the proffered employment, except as permitted under Rule 5-105(c).

Furthermore, the Rule provides:

(c) If a lawyer is required to decline employment or to withdraw from employment under Rule 5-105, no partner or associate, or any other lawyer affiliated with him or his firm, may accept or continue such employment.

Accordingly, it appears that in the present case, since the attorneys for plaintiff have a financial interest by virtue of the confession of judgment, they cannot undertake representation of defendant.