

or contemplated litigation between the parties so represented.⁸ Nor does a mere possibility of a conflict of interests preclude him from accepting employment from two different persons. *For instance, the position of an attorney who acts for both parties, to the knowledge of each, in the preparation of papers needed to effect their purpose, and gives to each the advice necessary for his protection, is proper. Therefore, it is not considered to be inconsistent with professional ethics for attorneys to act for both parties* in drawing up articles of copartnerships, in acting for grantor and grantee in the sale of real property, in acting for seller and purchaser in the sale of personal property, *in acting for lessor and lessee in the leasing of property*, and in acting for lender and borrower in handling a loan transaction, if done in good faith and with the full consent of all parties concerned.⁹ And where of two parties having engaged the same attorney to prepare certain documents involved in a business transaction between them neither gives to the attorney any confidential information entitled to the protection of the attorney-client privilege, the attorney is not subsequently disqualified from representing one of the parties in an action against the other involving the same transaction and documents.¹⁰ But unless he has the consent of the other party,¹¹ he may not accept such representation if in the course of his former employment he has gained from the other party confidential information he will, or may, be called upon to use in litigation.¹²

Whether there is any inconsistency in representing particular interests must depend largely upon the facts presented by each case.¹³ For instance, where two parties seek to accomplish a common end result and engage the services of a single attorney to implement their joint plan, the fact that one of the parties would have been better off not to have entered into the transaction is not in and of itself enough to make the respective interests so conflicting as to prohibit an attorney from representing them.¹⁴ The fact that an attorney retained by the administrator of an estate acts also for one of the heirs as against other heirs, in an adversary proceeding related to the property of the estate, does not necessarily involve improper representation of conflicting interests.¹⁵ And in an action for wrongful death caused by an industrial accident, an attorney representing the decedent's survivors as well as the compensation insurance carrier was held not to represent conflicting interests, where the litigation of the compensation claim had been completed, the award had been paid, representation of the insurance carrier had been assumed after action on behalf of the survivors had been brought, and the reasons for that assumption were fully disclosed to the survivors and approved by the court.¹⁶

Improper representation of conflicting interests may be a ground, not only for an invalidation of a fee agreement,¹⁷ but also for disciplinary action.¹⁸ But a lenient attitude may be taken in certain situations involving no actual harm, as where an attorney inadvertently became the attorney of an insolvent debtor, though he had previously accepted a retainer to represent a claim against said debtor,¹⁹ or where an attorney, while representing an administrator for general purposes, also represented a creditor for a special purpose, and no injury to the estate was shown.²⁰

Mr. EDMONDSON. A letter from Mr. Clarence A. Brechlin enclosing a letter from Mr. Brechlin. Mr. Brechlin, do you wish to file this for the record?

⁸ Lessing v Gibbons 6 CA2d 598, 45 P2d 258.

An attorney is not precluded, in the absence of litigation, existing or contemplated, from representing adverse parties, provided his employment is within the knowledge and consent of each and he deals fairly with both. American Box & Drum Co. v Harron 44 CA2d 370, 112 P2d 332.

⁹ Lessing v Gibbons 6 CA2d 598, 45 P2d 258 (it cannot be said as matter of law that attorney is prohibited from acting for both parties with knowledge and consent of both.)

¹⁰ Petty v Superior Court 116 CA2d 20, 253 P2d 28.

¹¹ Rules of Professional Conduct, rule 5.

¹² Galbraith v State Bar 218 C 329, 23 P2d 291.

¹³ Lessing v Gibbons 6 CA 2d 598, 45 P2d 258.

¹⁴ Moxley v Robertson 169 CA 2d 72, 336 P2d 992.

¹⁵ Jones Estate 118 C 499, 50 P 766; Healy Estate 137 C 474, 70 P 455; McCabe v Healy 138 C 81, 70 P 1008.

¹⁶ Burum v State Comp. Ins. Fund 30 C2d 575, 184 P2d 505.

¹⁷ Anderson v Eaton 211 C 113, 293 P 788.

¹⁸ Richardson v State Bar 19 C 2d 707, 122 P2d 889 (attorney, while acting as administrator of estate, also acted as attorney for administrator of another estate against which first estate had a claim).

¹⁹ Luce, In re 83 C 303, 23 P 350.

²⁰ Collins, In re 147 C 8, 81 P 220.