

Ethical Issues That May Arise In Multi-client Representations

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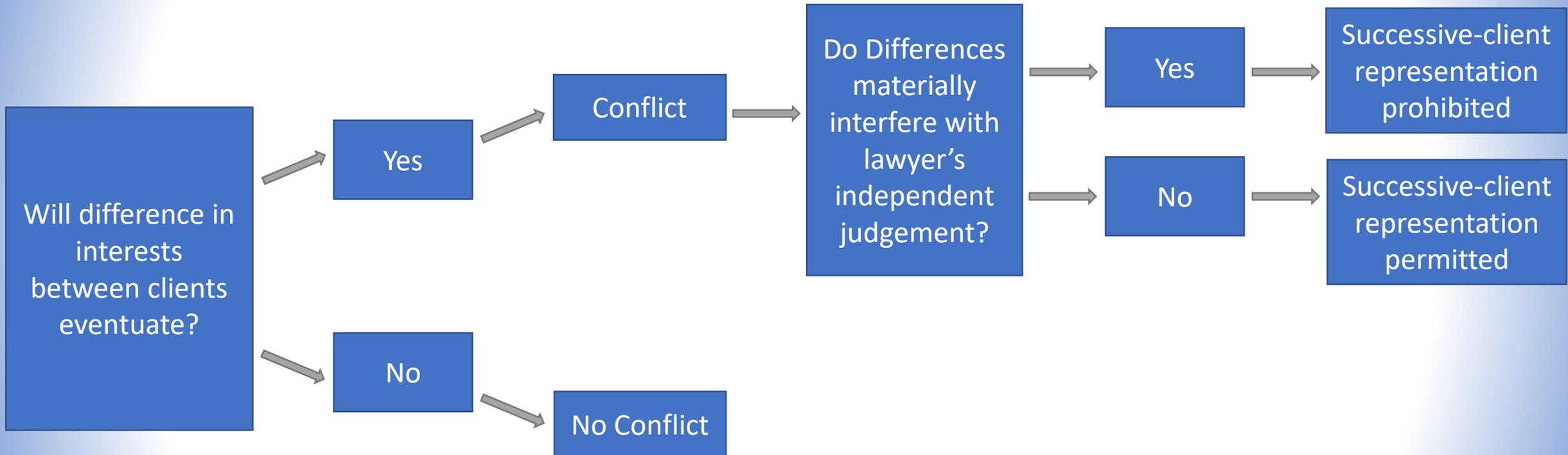
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AMERICAN COLLEGE
OF COVERAGE COUNSEL

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Is Multi-client Representation Permissible



Hypothetical

- Two unrelated entities are co-defendants in an underlying action.
- Both entities engage the same law firm to serve as coverage counsel in disputes against their respective insurers under separately acquired insurance policies.
- Each client has separate defense counsel.
- Coverage counsel attends mediation in the Underlying Action where coverage counsel learns of separate confidential settlement demands and offers with the underlying plaintiff that are not intended to be shared among the co-defendants.

Successive Client Representations

- Tortfeasor A, B, C, D, and E all contribute to Victim's injury
- Victim sues all Tortfeasors
- Lawyer A represents Tortfeasor A in coverage litigation against ACME Insurance Co.
- Tortfeasor A's litigation with ACME settles during mediation
- Tortfeasor B seeks to hire Lawyer A for Tortfeasor B's lawsuit against ACME
- Is Lawyer A permitted to represent Tortfeasor B?

Questions?

- What if Tortfeasor A's settlement with ACME includes a coverage-in-place agreement?
- What if ACME objects to Lawyer A representing Tortfeasor B because Lawyer A knows how much ACME is willing to pay in settlement?
- What if Tortfeasor A objects to Lawyer A representing Tortfeasor B because Tortfeasor A now wants a better relationship with ACME?
- What can Lawyer A disclose or not disclose to Tortfeasor B about Lawyer A's representation of Tortfeasor A?
- About the mediation?
- About the settlement?

Ethical Issues for Insurers with Multiple Insureds?

- Insurers often insure multiple defendants in multi-party cases
- Insurers often insure one defendant but also have potential Additional Insured coverage for other defendants
- There are typically coverage issues with respect to each insured and separate liability issues with respect to each insured

Hypothetical

- Solid Insurance provides primary insurance to General Contractor and Two Subcontractors, Plumbing and Electrical and they are all defendants in a construction defect lawsuit.
- Solid Insurance provided a defense under a reservation to General Contractor, Plumbing and Electrical.
- At mediation, Solid's coverage counsel is attending and addressing the coverage issues for all three insured defendants. All three have separate defense claim handlers from Solid attending as well.

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- With respect to all three defendant insureds, Solid's coverage counsel participates in discussions among defense counsel, the defense handler from Solid and personal/corporate or coverage counsel for that insured related to settlement value and responding to settlement demands
 - Solid's coverage counsel is therefore privy to the settlement demands and responses of each defendant insured, even though they each do not know what the other defendants are offering

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- Is this a conflict of interest?
 - Does each individual insured have the right to object?
 - Appropriate boundaries are dependent on the coverage counsel not revealing any information about other offers/demands.