No. 21627 --Committee on Legal Ethics v. Clark Frame and J. Michael Benninger

Neely, J., dissenting:

The majority accurately sets out the standard for determining whether representation of one client is directly adverse to another: the duration and intimacy of the lawyer's relationship with the clients involved; the functions performed by the lawyer; the likelihood of actual conflict; and the likelihood of prejudice. If Ms. McMillen were a named party in the Baamonde action, the case against Mr. Frame would be unassailable.

Ms. McMillen is in fact two steps removed from the arena of the Baamonde case: the real party in interest in that case was not Ms. McMillen and was not the corporation in which Ms. McMillen owns a controlling interest, but rather the corporation's insurer. Under the unity of interest doctrine, there is no representation of a client "directly adverse" to another client where, as here, the suit is against a corporation's insurer and not against the individual or the corporation the individual owns in terms of whose ox will actually be gored.

When Ms. McMillen retained Clark Frame as her divorce lawyer, Mr. Frame informed her of his representation in the Baamonde matter. Ms. McMillen expressed no concern. Ms. McMillen obviously retained

Mr. Frame because he is among the foremost lawyers in West Virginia and has a reputation for representing clients aggressively and successfully. Had Mr. Frame failed to disclose to Ms. McMillen the posture of the cases while actually aware of the possible conflict, his actions would deserve sanction. Had Ms. McMillen (who was soon if not immediately armed with full knowledge of the nature of both actions), registered an objection during months of continued contact with Mr. Frame, her case would be more plausible. Instead, Ms. McMillen gets this ridiculous opportunity to act out because, obviously, she did not get what from her perspective would have been a perfect result in her divorce action. Meanwhile the escutcheon of a highly-regarded lawyer in this state is needlessly besmirched.