

Session: Ethics, Lawyering and Professional Regulation

Topic: Conflicts of Interests

Recommended time: 1 hour 10 Minutes

Score: 100 Marks

Author: Manuel Akinshola

Conflicts of Interest

Jonathan was a young lawyer at MacTavish, Marier LLP (MML). He was assigned to work with Anand, the senior partner and part of his schedule included following up on prospective clients. One day, a certain Mrs. Thomas had called the firm to seek information about retainers in a matrimonial matter. After the initial conflicts check had proved negative, the call had been transferred to Jonathan who then spoke at length with Mrs. Thomas, and who had informed Jonathan that she was a victim of domestic violence and had barely managed to escape from her partner. Mrs. Thomas had spoken extensively with Jonathan about personal details regarding the state of her marriage, her children, her partner, work and financial situation. She had provided Jonathan with specific details of the series of abuse she had suffered while living with Baril, her partner for close to eight years. She had concluded by saying that she volunteered all those information because she intended to engage MML.

More than twice during the conversation, Jonathan had had to tell Mrs. Thomas to hold the line while he sought some clarifications from Anand, his boss. One of these was whether MML would be willing to take on the retainer, and Anand had said yes. And during the call, Jonathan had asked Mrs. Thomas why she did not think of engaging a lawyer in the town where the couple resided instead. Mrs. Thomas had indicated that she knew Baril very well and his tactics of seeking to intimidate her by getting through to everyone who wanted to help her. And this was why she was advised to seek legal counsel from another town outside the couple's residence.

At the end of the conversation, Mrs. Thomas had concluded that she might need to tarry a while before formally engaging MML since no trial date had been fixed for the application commenced against her by her husband. That was the last that was heard of Mrs. Thomas.

Jonathan had left the law firm of MML about two years ago, going solo. Last year, a certain Mr. Baril consulted Jonathan with a view to engaging him in a pending application against his wife. Jonathan had run a conflict check on his system and found none. In the course of the consultation, Jonathan recollected speaking with a Mrs. Thomas on similar facts while working at MML. He nevertheless concluded that Mrs. Thomas had never come back, so, there was neither retainer nor client-solicitor relationship between them. At any rate, he was no longer working at MML, so he signed the retainer agreement with Baril.

A trial date has now been set for the application filed by Baril. Mrs. Thomas has just received information to the effect that Jonathan had been retained by her husband. She wants to retain you but first seeks your legal opinion on whether Jonathan can act for Baril on the basis of conflict of interest. What is your legal opinion?