

#016

From: Rajan Patel <raj@rajanpatellaw.com>
Sent: Friday, May 18, 2018 8:05 AM
To: Comments Mailbox
Subject: Comment to Rule 2: 11-1 (b)(3)

Dear Mr. Grant:

As a practitioner who often litigates in the position of co-counsel working with an independent firm/attorney on behalf of a single client, I believe it is critical for two attorneys to be able argue for a single client, so long as the total time used between both attorneys does not exceed existing limits and the argument presented by each attorney is not duplicative/covers discrete issues.

Otherwise, the client may not be properly represented as the one attorney selected to argue will only be able to address matters within the scope of his/her retention in order to avoid committing malpractice and working for free. Obviously, this concern is not applicable when two attorneys from one office/firm represent a single client.

As an illustration of this concern, please note the following example that is based on an active matter for my office presently. This example occurs quite often and is not an isolated instance.

Tom purchases property from John. The owner of the property prior to John was an heir of an Raymond. Raymond acquired his interest through his sister, and his sister acquired an interest previously through an Estate deed (property was in the family for nearly 60 years per the record).

Tom is suddenly is sued by one of Raymond's siblings claiming that the two prior deeds in the chain of title are void or voidable (for fraud), and that Tom was involved in a fraudulent scheme to further the prior alleged fraud.

Tom files a title insurance claim and his insurance carrier appointed my office to defend Tom on the substantive title aspects of the suit related to title. However, title insurance does not cover actions or torts alleged to be intentionally wrongful (like the furtherance of a fraud/fraudulent scheme) where money damages are sought. As a result, the insured/my client, Tom, has to retain separate counsel and we have to collaborate/split tasks, etc. accordingly.

If either I or Tom's personal counsel were forced to be the sole mouthpiece for the client, I respectfully believe that we'd be forced to commit malpractice and work for free (by taking on the other attorney's role) in a case like this.

For these reasons, I respectfully submit that amending the rule as proposed will be injurious to clients and the bar.

I thank you for considering my comments and am happy to elaborate on this if so requested.

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