The facts giving rise to this inquiry are as follows: A client has hired an attorney on a contingent fee contract. The client wishes to retain a non-lawyer medical consultant to provide the following services: (1) Evaluate the medical aspects of the case; (2) Help the attorney in preparation for the medical issues involved in the case, including preparation for depositions, cross-examinations, and trial; and (3) Helping attorney and client find appropriate medical expert witnesses. The medical expert witnesses, other than the consultant, are paid a reasonable fee, plus expenses, regardless of the outcome of the case.

In exchange for the aforementioned services to be performed by the medical consultant, the client would pay the medical consultant a contingent fee, consisting of a percentage of either (a) the total recovery, or (b) the client's share of a settlement or judgment. This contingent fee agreement of the medical consultant is to be separate and apart from the contingent fee charged by the attorney for his legal services; however, in the event of a settlement or judgment, the client wishes to designate the attorney as the conduit to distribute the final funds to everyone involved, including the consultant. The client cannot afford to hire a medical consultant on a non-contingent fee basis.

A very similar arrangement was approved on August 10, 1976, in ABA Informal Opinion 1375 if these four requirements were met:

(1) The lay person or agency was not to engage in the unauthorized practice of law contrary to DR 3-101(A);

(2) The lawyer did not share legal fees with the lay person or agency contrary to DR 3-102(A)(1-3);

(3) The contingent fee was not payable for the testimony of the lay person or agency contrary to DR 7-109(C)(1-3); and

(4) The arrangement was not merely a subterfuge for fee-splitting between a lawyer and a lay person.

Thereafter on February 1, 1980, ABA Informal Opinion 1445 stated that where a consulting corporation rendered services to a trial attorney in connection with economic matters, the consulting corporation could not work on a contingent fee basis "even if the consulting corporation had no witness role in a trial" where the consulting corporation was employed by the attorney instead of by the client.
The rule that one should not be permitted to do indirectly what one cannot do directly is valid in the field of legal ethics. The Committee is concerned that the arrangement here can be misused so that the Code is violated by the attorney. The Committee nevertheless has determined that the arrangement is proper if the four requirements of ABA Informal Opinion 1375 noted above are met.
We have been asked whether it is ethically permissible for a lawyer to charge clients interest on unpaid balances of past due accounts.

This matter was discussed in American Bar Association Formal Opinion 338. We approve and adopt the language of that Opinion which states in part:

It is . . . the Committee's opinion that a lawyer can charge his client interest providing the client is advised that the lawyer intends to charge interest and agrees to the payment of interest on accounts that are delinquent for more than a stated period of time.
The Legal Ethics Committee has been asked whether there is a conflict of interest for the Prosecuting Attorney's Office to represent a petitioner in a support matter under Title IV-D of the Social Security Act, who is also being criminally prosecuted by the same Prosecuting Attorney's Office.

It is understood that Statutes impose a duty on the Prosecuting Attorney to represent Title IV-D (Welfare) petitioners in support cases. Under the Title IV-D program, the Child Support Division of the Indiana State Department of Public Welfare enters into cooperative agreements with the Prosecuting Attorney of each judicial circuit to enforce support rights assigned by welfare recipients to the Department. (See I.C. 12-1-6.1-10 and I.C. 12-1-6.1-12)

Previous opinions of the Committee have pointed out the difficulty in questions involving conflict of interest. (See, e.g., Legal Ethics Committee Opinion No. 5 of 1980) Part of the difficulty is that many conflict of interest questions must be resolved under three separate but closely related Canons of the Code of Professional Responsibility.

Canon 4 requires the preservation of confidences and secrets of a client; Canon 5 requires the lawyer to exercise independent professional judgment on behalf of a client; and Canon 9 requires that a lawyer avoid even the appearance of professional impropriety.

A.B.A. Formal Opinion No. 342 strikes a balance between the wording of these Canons, and contains an excellent discussion of the relationship of these Canons, and concludes that a strict course of conduct is usually necessary.

Previous opinions of the Committee have indicated that if there is any doubt as to whether or not a conflict of interest exists, then the problem should be resolved by the attorney not accepting the employment. However, the question now before the Committee is unique in that specific statutes impose an obligation that creates a possible duty to represent potentially differing interests.

In Title IV-D cases, we do not believe a conflict of interest exists because no true attorney-client relationship exists between the prosecuting attorney's office and the welfare recipient. In Gibson v. Johnson (1978), 35 Ore. App. 493, 582 P. 2d 452, the Oregon Court of Appeals reached this conclusion in a case involving similar statutory requirements. The following quote from that case is helpful:

"The general statutory plan is that the recipient must assign support rights to the state, and the state, with the required cooperation of the recipient-assignor,
collects the support from the obligor. The support is collected on behalf of the state as assignee and not on behalf of the recipient. . . . The essence of this statutorily created relationship is that of assignor-assignee. The mere fact that the assignor is required to cooperate with the attorney for the assignee does not establish an attorney-client relationship. The contact between the recipient and the SED attorneys is for the benefit of the state in recouping some of the funds paid out for aid to dependent children. The state may enforce the obligation whether the recipient cooperates or even over the specific objection of the recipient-assignor. . . . If the SED attorneys were representing the recipient in an attorney-client relationship, it would seem the wishes of the recipient would have to be given some status in the decision to proceed.

"It is true the ADC recipient can reap the benefits of a support decree, obtained by the SED on behalf of the state, after the ADC benefits are terminated. This is merely an ancillary benefit of the state's enforcement of the support obligation for its own purposes and does not create an attorney-client relationship."
The Legal Ethics Committee has been supplied the following inquiry, viz:

Attorney R and D formed a partnership and established "a legal clinic" known as "Sand Hill Legal Clinic" (although the exact name has been changed, the supplied name Sand Hill accurately approximates the geographic generic-trade name which is the subject of the inquiry). The letterhead which was supplied with the inquiry is entitled "Sand Hill Legal Clinic" and portrays a picture of a body of water coupled with a sand hill, approximately four and a half inches (4-1/2") long and one inch (1") high at the peak, and shows the names of "R & D" together with a former undisclosed associate. Also supplied are copies of telephone and newspaper advertising which show that the three attorneys' names are listed in the telephone directory. The other ads submitted did not disclose who are the lawyers that operate the "Sand Hill Legal Clinic," but do quote a fixed figure "for half hour consultation." A telephone listing indicates that all three attorneys are available for practice in "bankruptcy, wills, real estate, divorce, traffic, adoption, general practice."

After Opinion No. 3 of 1979 specifically prohibiting the use of the trade name "Indianapolis Legal Clinic" came to the attention of the firm, "R & D" ceased using a prior trade name "Sand Hill Legal Clinic" and since such time the employee-associate attorney has been dismissed. However, the partner indicates that any future associate employed by "R & D" would be identified in the letterhead. "R & D" specifically desire to continue the use of "Sand Hill Legal Clinic" as part of the firm name much as though this was a predecessor firm or deceased or retired partner.

The following questions arise from the inquiry, viz:

1. Is a logo on the letterhead permissible?

2. Is the use of the proposed trade name "R & D Sand Hill Legal Clinic" proper?

With respect to the first question, the committee feels that the use of the aforesaid logo in connection with either advertising or on the letterhead is in violation of the rules. The aforesaid logo would appear to substitute for or be more prominent than the name of the firm in advertising, and would tend to mislead as to the identity, responsibility and status of those practicing thereunder in violation of DR 2-102 (B); c.f. Illinois State Bar Association Opinion #623 (12/9/78), BA of Greater Cleveland Opinion #99 (9/5/73), Official Opinion #3 of 1979 holding "distinctive advertising is improper . . .," EC 2-10, 10 (A).
The decision is consistent with New York County Bar Association Opinion 591 (7/7/71) disapproving of the use of monogram on lawyers letterhead for the reason that . . ." The first sentence of DR 2-102 (A) is paraphrased in the following language in Wise, Legal Ethics, Second Edition, P. 143:

"As a safe generality, the more nearly the letterhead conforms to the conventional, the customary, the usual, and the ordinary, the safer its use. The usual letterhead, of course, is in quiet good taste, with normal, modest-sized lettering, giving the name of the individual or firm, the address, the telephone number, and occasionally a cable code name."

With respect to the second question raised, the Committee notes that the latter amendment of the trade name by adding "R & D" prior to the trade name differentiates facts only slightly from the facts which were involved in Illinois State Bar Association Opinion #623 (12/9/78), which prohibited the use of the term "The Main Street Legal Clinic" on the following grounds:

"... DR 2-102 (B) provides that 'a lawyer shall not practice under a name that is misleading as to the identity, responsibility or status of those practicing thereunder or contain any other deceptive statement or is contrary to law.' The Section goes on to permit the use of the names of deceased or retired members of the firm, but the clear implication is that the names involved must be those of lawyers. See also DR 2-101 (B) (1). (A deceptive statement includes any communication that fails to identify the lawyer making the communications.)..."

The New York State Bar Association Opinion #445 (11/10/76) relying upon EC 2-11 as well as DR 2-102 (B) outlines the reasons for the prohibition as follows:

"... These provisions of the Code were derived from former Canon 33, which provided in part:

"That the selection and use of a firm name, no false, misleading, assumed or trade name should be used.

"ABA 318 (1967), a comprehensive opinion on the subject of firm name, reviewed a number of opinions decided under former Canon 33. It referred disapprovingly to the use of 'Legal Bureau' (N.Y. City 48 (1926-27), 'Legal Clinic' (N.Y. City 793 [1954]), and 'Northern Law Clinic' (ABA Inf. 376), as firm names, presumably on the ground that trade names were inappropriate. The present Code provisions are equally proscriptive of the use of trade names, hence the name 'Community Law Office' would be improper. It is well known that offices staffed by the Legal Aid Society Volunteer Lawyers in New York City operate under the name 'Community Law Office.' Since the term 'Community Law Office' connotes an indefinite tie to the community, or to the use of volunteer lawyers to serve the underprivileged,
it also could mislead laymen concerning the identity, responsibility, and status of those practicing thereunder. The use of such term under the circumstances described by the inquirer would be in contravention of the provisions of EC 2-11 and could not, therefore, be deemed proper . . . "

There are a number of authorities which have prohibited the naming of a building where it would tend to mislead lay-people, e.g. Alaska Bar Association Opinion 69-4 (9/69) "Anchorage Legal Center"; Massachusetts Bar Association Opinion 74-3 (Fall/74) "a lawyers center or legal center"; Arizona Bar Association Opinion 72-3 (1/27/72) "legal building, law building or legal center."

Texas State Bar Association Opinion 242 (8/61) held the use of the name "legal clinic" or "court house annex" failed to conform to prior Canon 24. Consistent with this viewpoint is the Illinois State Bar Association Opinion #602 (5/20/78) held that the practice of law may not be conducted through a professional corporation with a fictitious trade name such as "Suburban Law Offices, Chartered." Ind. A.D. Rule 27 (a) by its plain language would prohibit use of a trade name because the name may only contain the surnames of some of its shareholders followed by the word "Professional Corporation" or "Pro. Corp."

In Texas State Bar Association Opinion 398 (11/78) the Committee interpreted Bates v. State Bar of Arizona (1977) 433 U.S. 350, which was cited by this Committee in the aforesaid Opinion No. 3 of 1979, in light of Friedman v. Rogers (1979) 440 U.S. 1. It cited the latter Supreme Court decision which prohibited an optometrist from practicing under an assumed or trade name because the trade name conveyed no information about the price and nature of the service offered and was, therefore, deceptive. Additionally the Supreme Court noted that a trade name could be readily changed to avoid the stigma of negligence or misconduct, and said trade name usage was not proper.

The conclusion of that Opinion reads in material part as follows:

"A lawyer or professional corporation may practice under any name that is not misleading as to the identity, responsibility or status of those practicing thereunder, or otherwise false, fraudulent, misleading or deceptive. For example, 'Legal Clinic, Ltd.' The State Bar may constitutionally disallow the use of impersonal trade names or assumed names such as 'Southwest Trial Associates' by attorneys in private practice. This policy does not restrain the flow of commercial speech within the protective scope of the First Amendment; in fact, it is designed to assure that the public receives more information about the identity, responsibility and status of persons engaged in the practice of law."

To the same effect Washington State Bar Association #159 (4/75) held that private law firms or offices as distinguished from publicly funded non-profit organizations must have in their names the name of one of the lawyers in the
firm, as impersonal names are improper.

It is the opinion of this Committee that "R & D Sand Hill Legal Clinic" may not be utilized by "R & D" because the word "Sand Hill" is a generic term and does not import any specialty or degree of expertise.

As noted in our earlier Formal Opinion No. 3 of 1979, the "... Use of a trade name is prohibited by DR 2-102 (B)." Accordingly "R & D" should not show on their letterhead that they are a successor to "Sand Hill" because "Sand Hill" was never an active partner. "Sand Hill" is not the name of a deceased or retired partner. "Sand Hill" should be permanently buried, because it was nothing more than a trade name established in apparent unknown violation of DR 2-102 & EC 2-11.
The Committee has been asked for its opinion on the following:

A, a member of a law firm organized as a professional corporation, has been appointed referee of the Small Claims and Misdemeanor Division of the Circuit Court of the county where the firm has its offices. The appointment was made by the Judge of the Circuit Court. The Small Claims and Misdemeanor Division maintains a separate docket and appeals from the Small Claims Division are taken to the Circuit Court. A acts as referee on a part-time basis and continues his legal practice and association with the firm. No member of the firm practices before the Small Claims and Misdemeanor Division of the Circuit Court. May a member of the firm other than A practice before the Circuit Court if the regular judge disqualifies himself and a special judge is appointed to serve in those matters?

The Committee is of the opinion that any lawyer who is a member or associate of the part-time referee's law firm should not appear in any matter in which the part-time referee himself may not appear. While the Indiana version of DR 5-105(D) of the Code of Professional Responsibility requires vicarious disqualification of all lawyers of the firm only in the multiple employment context, the Committee believes that the vicarious disqualification rule would apply by analogy to lawyers in practice with a part-time judge. This vicarious disqualification rule was recognized in ISBA Opinion No. 5 of 1978 in which the Committee stated that the partners and associates of a part-time judge may not do what the part-time judge himself may not do.

The Indiana Code of Judicial Conduct provides that any officer of the judicial system performing judicial functions, including an officer such as a referee in bankruptcy, special master, court commissioner, or magistrate, is a judge for the purpose of the Code. Therefore, a part-time referee would be subject to the Code of Judicial Conduct.

The Code of Judicial Conduct further provides that a part-time judge who is permitted to devote time to another profession and whose compensation for that reason is less than a full-time judge "should not practice law in the court on which he serves or in any court subject to the appellate jurisdiction of the court on which he serves, or acts as a lawyer in a proceeding in which he has served as a judge or in any other proceeding related thereto." The Committee's opinion is that this rule would prohibit lawyers practicing with A from appearing in Circuit Court. The court in which the referee serves is the Circuit Court even though a separate docket is maintained for small claims and misdemeanors. It could be argued that the rule should not be interpreted to apply to matters exceeding the jurisdiction of the referee. See ABA Informal Opinion No. 928 (April 6, 1966). However, since the Code of Judicial Conduct expressly extends
the prohibition to courts having appellate jurisdiction over the court in which the part-time judge serves, the committee feels the rule cannot be so narrowly construed.

The disqualification may not be avoided by the appointment of a special judge. In ISBA Opinion No. 2 of 1974, it was stated that lawyers associated with a part-time City Judge were prohibited from practicing in the City Court even if the regular judge disqualified himself and appointed a special judge or judge pro tem. Furthermore, the disqualification is particularly necessary in criminal matters. In ISBA Opinion No. 1 of 1974, this Committee stated that neither a part-time City Judge with jurisdiction over some misdemeanors, traffic violations and city ordinance violations, but not felonies, nor his chief referee, nor law partners of the City Judge should represent criminal defendants in any state court.
The Committee has been asked whether a part-time judge of a City Court and other members of his law firm may practice civil law in other courts, including courts to which matters originating in the City Court can be appealed. It is the opinion of the Committee that a part-time judge and the members of his firm may do so as a general rule.

The Code of Judicial Conduct prohibits a part-time judge to practice law "in the court on which he serves or in any court subject to the appellate jurisdiction of the court on which he serves, or act as a lawyer in a proceeding in which he has served as a judge or in any other proceeding related thereto." Previous opinions of this Committee have also stated that it would be improper for a part-time judge to represent non-indigent criminal defendants in any court in Indiana or in the federal judicial system. See Opinion No. 5 of 1978 and Opinion No. 1 of 1974. A reconsideration of those opinions has not been requested at this time.

It is the opinion of the Committee that the part-time judge and other members of his firm are not ethically prohibited from practicing civil law in courts other than the City Court, including courts having appellate jurisdiction over the City Court, in matters unrelated to proceedings in which the part-time judge has served in a judicial capacity, merely because of this position as a part-time judge.

In Opinion No. 5 of 1981, the Committee stated that it would be improper for a part-time referee of the Small Claims and Misdemeanor Division of a Circuit Court and other members of his firm to practice law in the Circuit Court. This opinion concluded that even though there was a separate docket for the Small Claims and Misdemeanor Division, it was still a part of the Circuit Court and, therefore, within the scope of the prohibition. At one point, that opinion mistakenly stated that the Code of Judicial Conduct extends the prohibition to courts having appellate jurisdiction over the court in which the part-time judge serves. Actually, the Code of Judicial Conduct extends the prohibition only to courts subject to the appellate jurisdiction of the court in which the part-time judge serves. The Committee now strikes the incorrect sentence from that opinion. However, the incorrect sentence does not affect the Committee's conclusion, and the opinion is reaffirmed in other respects. (October, 1982)

Res Gestae - May, 1983
The Legal Ethics Committee of the Indiana State Bar Association has been asked to render an opinion on the rights and responsibilities of an attorney to a former client in the following factual situation: An attorney entered into a fee agreement with a client which provided that the client was responsible for paying all costs and expenses incurred, and further provided for a fee of a certain percentage, contingent upon the success of the attorney in recovering a settlement or a judgment. The attorney proceeded to carry the case through the initiation of litigation and preliminary discovery, whereupon the client discharged the attorney and retained other counsel. The attorney, on his client's behalf, advanced certain funds for expenses and certain other expenses remain unpaid. Further, the attorney had invested in excess of twenty-six hours of time in the case prior to being discharged by the client. It is assumed for the purposes of this opinion that the termination of the attorney's services by the client was without cause.

The issues to be decided under the above factual situation are:

1. Is the attorney entitled to compensation for time spent on the case prior to discharge;
2. Is the attorney entitled to reimbursement for expenses advanced; and
3. Is the attorney entitled to hold the file of the former client until he has been paid for his services and reimbursed for expenses advanced?

The law in the State of Indiana is that when an attorney is to be paid on a contingent fee basis and his services have been rendered impossible or prevented by the client, the attorney may recover the reasonable value of his services.


In 1898, the Indiana Supreme Court stated:

"It is well settled that, where the complete performance of an attorney's services has been rendered impossible, or otherwise prevented, by the client, the attorney may, as a rule, recover on a quantum meruit for the services rendered by him. [Citations omitted] If the compensation agreed upon is contingent upon the successful result of the suit, the measure of damage is not the
contingent fee, but the reasonable value of the services rendered. [Citations omitted]"

French v. Cunningham, 149 Ind. 632 (1897)

The Legal Ethics Committee is precluded from rendering opinions on questions of law, and, therefore, refrains from any interpretation or opinion as to the legal effect of the above-cited cases.

There are no Canons, Ethical Considerations, or Disciplinary Rules which deal precisely with this issue. DR 2-106, which deals with illegal or clearly excessive fees, is not applicable. Ethical Consideration 2-23, which states in pertinent part as follows, "A lawyer should be zealous in his efforts to avoid controversies over fees with clients and should attempt to resolve amicably any differences on the subject. He should not sue a client for a fee unless necessary to prevent fraud or gross imposition by a client."; also does not apply because the factual situation with which we are presented deals with a former client who terminated the attorney-client relationship without cause. Furthermore, any suit to recover a fee based on the quantum meruit theory would be against the former client--not a client. Moreover, the factual situation seems to fall squarely within the language of the Ethical Consideration "... gross imposition by a client."

In conclusion, it is the opinion of the Legal Ethics Committee that there is nothing unethical about an attorney requesting fees on a quantum meruit theory from a former client who has terminated the attorney-client relationship without cause after the attorney has invested time in the case, and this is true even though the attorney had a contingency fee contract with the former client and even though there might ultimately be no recovery by the client.

With regard to the expenses advanced by the attorney for and on behalf of a former client in connection with professional services performed on the client's case, these also are clearly recoverable from the former client.

It then has to be decided whether or not the attorney may hold the file of the former client until the fees and costs have been paid.

I.C. 1971, 33-1-3-1 provides a statutory lien in favor of an attorney on a judgment rendered in favor of his client.

State v. Hendricks Circuit Court, (1962) 243 Ind. 134, 183 N.E. 2d 331, held that: "The rule is well established in Indiana that the statutory lien is not the only lien available for the security of an attorney in performing services beneficial to his client, but that equity supplies a lien independent of statute. [Citations omitted]"

The Court in Hendricks called this equitable lien a retaining lien. The Court favored the definition found at 7A CJS, Attorney and Client, §358, and held that a retaining lien gives an attorney the right to possess a client's documents, money, or other property which comes into the hands of the attorney professionally, until the general balance due him is paid.
Again, Legal Ethics Committee is precluded from rendering opinions on questions of law and refrains from any interpretation or opinion as to the legal effect of the above-cited references.

On this precise issue, Opinion No. 5 of 1977, which overruled Opinion No. 1 of 1966, concluded that although the question of retaining a client's papers is ordinarily a question of law which is governed by the jurisdiction's statutory and common law relating to attorneys' liens, under certain circumstances, the propriety of such a lien may involve ethical considerations. For example, the ethical aspects of retaining such papers must be considered in circumstances of flagrant overcharges and in circumstances where the attorney who is retaining possession of the papers has deliberately failed to perform the services which he had contracted with his client to perform. The conclusion of the opinion went on to state that other situations exist in which an attorney may be ethically required to return possession of a client's papers to the client because of ethical considerations, despite the fact that the attorney may have a retaining lien under the statutory or common law.

Ethical Consideration 5-7, while not directly in point, does state in part that:

"The possibility of an adverse effect upon the exercise of free judgment by a lawyer on behalf of his client during litigation generally makes it undesirable for the lawyer to acquire a proprietary interest in the cause of his client or otherwise to become financially interested in the outcome of the litigation. However, it is not improper for a lawyer to protect his right to collect a fee for his services by the assertion of legally permissible liens, even though by doing so he may acquire an interest in the outcome of the litigation."

DR 9-102(B) (4) states:

"A lawyer shall promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive." (Emph. added)

Lastly, DR 5-103(A) (1) states:

"A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of the litigation he is conducting for a client, except that he may acquire a lien granted by law to secure his fee or expenses."

It is the opinion of the Legal Ethics Committee that, under the factual situation presented, the attorney is entitled to a legally permissible lien and may hold the file of the former client until he has been reimbursed for expenses advanced by
him. Until the former client makes payment, thus discharging the lien, he is not entitled to receive his file.

However, once the former client has reimbursed the attorney for the expenses advanced, the attorney must promptly turn over the file to him. The lien should and ought not be utilized in cases where the attorney is seeking payment for his services rendered on a quantum meruit theory. In these situations, the attorney should pursue this remedy provided by law without the assertion of the lien. The Legal Ethics Committee can envision too many situations where asserting the lien would result in substantial ethical problems, such as were mentioned in Opinion No. 5 of 1977.
The Legal Ethics Committee has been asked whether there is a violation of the Code of Professional Responsibility for a part-time Prosecuting Attorney (or any other attorney associated with the Prosecuting Attorney's Office) to represent a civil client in a private capacity in a matter involving the collection of support or an action to modify an Order relating to support payments.

This question has been presented to the Committee in view of the several statutes which impose a duty on the Prosecuting Attorney to represent either Title IV-D (Welfare) and Non-IV-D petitioners in support and paternity cases. These statutes are identified in ISBA Opinion No. 3 of 1981. The question is important in that these statutes impose an obligation that could create a possible violation of the Code of Professional Responsibility.

In addition, a person who, being able, intentionally fails to provide support for his dependent child commits a Class D Felony, pursuant to I.C. 35-46-1-5. The filing of a civil action for the collection of support by a part-time Prosecuting Attorney (or his part-time Deputy) in a private capacity could give the appearance of using the pressure of the public office to collect support for a private client.

The Indiana Supreme Court concluded that a part-time Prosecuting Attorney violated the Code of Professional Responsibility where such part-time Prosecuting Attorney filed bad check cases in a private capacity when it was also his duty to criminally prosecute the drawers of bad checks.

DR 9-101(B) prohibits a lawyer from accepting private employment in a matter in which such lawyers have substantial responsibility while serving as a public employee. DR 5-101(B) prohibits a lawyer from engaging in multiple employment, where independent professional judgment on behalf of one client is likely to be adversely affected by representation of another client.

The Committee concludes that there would be a violation of the Code of Professional Responsibility for a part-time Prosecuting Attorney (or his part-time Deputy) to handle cases involving the collection of support in his capacity as a private attorney. There would also be a violation of the Code if the part-time Prosecuting Attorney defended a party in a support arrearage civil contempt proceeding, since the attorney may later be required to prosecute this client under I.C. 35-46-1-5.

There would be no conflict if a part-time Prosecuting Attorney were to handle a civil matter in his capacity as a private attorney in a case to modify a support order, because the modification proceeding is exclusively a civil proceeding without the potential criminal proceeding characteristics present in back support collection cases.
The Legal Ethics Committee of the Indiana State Bar Association has been asked to render an Opinion as to whether there is a violation of the Code of Professional Responsibility for a part-time Prosecuting Attorney, in his capacity as a private practitioner, to represent the county welfare department in a proceeding under I.C. 31-6-4-10 to determine whether a minor child is a child in need of services.

I.C. 31-6-4-10(a) permits the Prosecutor or the attorney for the county welfare department to request the Juvenile Court to authorize the filing of a Petition alleging that a child is in need of services, and to represent the State's interest in all subsequent proceedings on the Petition. This statute appears to allow the county welfare department the discretion to decide whether to request the Prosecutor or its welfare attorney to handle such a proceeding.

DR 9-101(B) prohibits a lawyer from accepting private employment in a matter in which he had substantial responsibility while he was a public employee. Also, DR 5-101 requires that employment be refused when the interests of the lawyer may impair his professional judgment.

The Committee concludes that, should the county welfare department request a part-time Prosecutor (or his part-time Deputy) to handle a matter under I.C. 31-6-4-10 in his capacity as a private attorney, the Prosecuting Attorney must refuse, and can only handle the matter in his capacity as a public employee. The Committee believes that should such a Prosecuting Attorney handle this matter in his private capacity, he would conceivably be receiving a fee for handling a matter which he might otherwise be required to undertake as Prosecutor with no additional compensation.

Because it is the "State's interest" that would be represented, whether as a public employee, or as a private attorney, there would be no conflict or a violation of the Code for a Prosecutor to also serve as the county welfare department attorney. But in a case under I.C. 31-6-4-10, such an attorney would have to handle the case as a Prosecutor, and not as the welfare attorney.
The facts giving rise to this inquiry are as follows:

Approximately in June, 1980, the City retained an Associate of a local law firm to handle labor negotiations for the City with three different unions representing city employees. These negotiations were concluded and contracts signed in February, 1981. In or around November, 1980, a partner in the associate's firm filed a personal injury suit on behalf of an individual Plaintiff, in which the City was one of several defendants. That suit is still pending.

In early January, 1981, the City requested this same partner to file a lawsuit on behalf of the City in a totally unrelated matter. A few days later the Mayor was informed that this partner had already filed a suit in November - a fact that the Mayor had either forgotten or had not been informed.

The question is asked as to whether it is proper for a member of the firm to file a suit against a client while another member of the same firm is representing the same client in another matter.

We believe that Disciplinary Rule 4-101, requiring the preservation of confidences and secrets of a client, needs to be considered to resolve this question.

We do not believe it matters whether different members of the same firm are doing different things or whether it is a one-man firm handling all cases since the knowledge of one member of the firm is imputed to all other members of the firm. See for example Schloetter v. Railoc of Indiana, Inc., 546 F.2d 706 (Cir. 7, 1976).

We note at the outset that each case needs to be considered on its merits. In the Schloetter case, supra., Company A had engaged in patent litigation approximately ten (10) years before. In the course of subsequent infringement litigation the Attorney who had largely represented Company A in the original litigation joined the law firm representing Company A's adverse party. Company A filed a Motion to remove the other firm from the case and this was done without any showing that Company A's former lawyer shared any privileged information or participated in the case in any way.

All Attorneys have the responsibility to strive to maintain public confidence in the legal profession. Under the circumstances given, we believe that the answer to the question presented should be no.
The Legal Ethics Committee has been asked whether there is a conflict of interest for a part-time Prosecuting Attorney to represent a client in a civil matter in his capacity as a private attorney against another client of the part-time Prosecuting Attorney, which is being represented in his capacity as a Title IV-D Prosecutor.

Of course, an attorney cannot represent a client on the one hand and handle a case against such client on the other hand, in matters which are related and/or involve similar circumstances. Such conduct would be in violation of Canons 4, 5 and 9 of the Code of Professional Responsibility.

However, if the two cases involve completely different and unrelated matters, then there would be no violation of the Code of Professional Responsibility, nor a conflict of interest to handle such matters, provided that meaningful and express consent is obtained after full disclosure of the facts, pursuant to DR 5-105(C). Such consent would be necessary in view that such multiple representation could be misunderstood by the parties. In the event that this consent cannot be obtained, then the part-time Prosecuting Attorney would be required to reject the employment in his private capacity in the civil matter.