

Does Defense Counsel Have One or Two Clients?

A State-by-State Analysis

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Jack S. Pierce | Senior Partner | Barger & Wolen LLP

CLIENT STATUS BY JURISDICTION

JURISDICTION	NUMBER OF CLIENTS	AUTHORITY
Alabama	Dual Client	Mitchum v. Hudgens, 533 So. 2d 194, 198 (Ala. 1988) (stating that when insurance company retains attorney to defend action against insured, attorney represents insured as well as insurer to further the interests of each other)
Alaska	Dual Client	Home Indem. Co. v. Lane Powell Moss & Miller, 43 F.3d 1322, 1330 (9th Cir. 1995) (recognizing that insured and insurer are both represented by attorney as long as there is no conflict of interest)
Arizona	Dual Client	Paradigm Ins. Co. v. Langerman Law Offices, P.A., 200 Ariz. 146, 24 P.3d 593 (2001). In the context of a challenge as to whether, in the absence of a conflict, defense counsel may represent both the insured and the insurer, the Arizona Supreme Court held that an attorney-client relationship may be established between an insurer and defense counsel in such a situation. However, even where insurer is not a client, defense counsel owes the insurer a special duty.
Arkansas	Unclear	First Am. Carriers, Inc. v. Kroger Co., 302 Ark. 86, 787 S.W.2d 669 (1990)
California	Dual Client	Gulf Ins. Co. v. Berger, Kahn, Shafton, Moss, Figler, Simon & Gladstone, 79 Cal. App. 4th 114, 126 (2000) (Ct. App. 2000) (recognizing that attorney has two clients: insured and insurer)
Colorado	Single Client	Essex Ins. Co. v. Tyler, 309 F. Supp. 2d 1270 (D. Colo. 2004), relying on Colorado Bar Ass'n Ethics Comm. Formal Op. 91 (1993)
Connecticut	Single Client	Metropolitan Life Ins. Co. v. Aetna Cas. & Sur. Co., 730 A.2d 51, 63 (Conn. 1999) (stating attorney's duty is to client, the insured, and not to the insurer). <i>But see</i> King v. Guiliani, No. CV92-0290370-S, 1993 WL 284462, at *6 (Conn. Super., July 27, 1993) (stating attorney can represent insurer and insured unless conflict arises)

Delaware Dual Client Hoechst Celanese Corp. v. National Union Fire Ins. Co., 623 A.2d 1118, 1124 (Del. Super. Ct. 1992) (discussing relationship among different defendants to determine whether documents were privileged; court suggests attorney may represent both insurer and insured)

District of Columbia Dual Client National Union Fire Ins. Co. v. Aetna Cas. & Sur. Co., 384 F.2d 316, 317-18 (D.C. Cir. 1967) (finding that attorney acted as insurer's representative while defending insured)

Florida Dual Client In re Proposed Addition to the Additional Rules Governing Conduct of Attorneys in Fla., 220 So. 2d 6, 8 (Fla. 1969) (finding that both salaried and non-salaried insurance attorneys may represent insurer and insured if there is no conflict)

Georgia Dual Client Coscia v. Cunningham, 299 S.E.2d 880, 881 (Ga. 1983) (recognizing that attorney represents both insured and insurer)

Hawaii Dual Client Wong v. Fong, 593 P.2d 386 (Haw. 1979). Note Finley v. Home Ins. Co., 975 P.2d 1145 (Haw. 1998) (dealing with conflicts of interest; held that attorney cannot represent both insurer and insured when there is a conflict, although insurer can still appoint attorney)

Idaho Dual Client Pendlebury v. Western Cas. & Sur. Co., 406 P.2d 129, 134 (Idaho 1965) (recognizing that attorney may represent both; when there is a conflict, attorney may be in an awkward situation and cannot take a position adverse to the interest of client)

Illinois Dual Client Waste Mgmt., Inc. v. International Surplus Lines Inc. Co., 579 N.E.2d 322, 239 (Ill. 1991) (“[W]hen insurer retains attorney to defend insured, attorney represents both insured and insurer in furthering the interests of each.”)

Indiana Dual Client Cincinnati Ins. Co. v. Wills, 717 N.E.2d 151, 160-61 (Ind. 1999) (recognizing that attorney represents both insured and insurer; dual representation is permissible even when attorney was in-house counsel for insurer, because their interests are aligned)

Iowa Dual Client Henke v. Iowa Home Mut. Cas. Co., 87 N.W.2d 920, 923 (Iowa 1958) (stating that attorney represented both insured and insurer, and fact that another selects and pays for attorney does not control attorney-client relationship), *cited with approval in* Squealer Feeds v. Pickering, 530 N.W.2d 678, 684 (Iowa 1995)

Kansas Dual Client Glenn v. Fleming, 781 P.2d 1107, 1113 (Kan. Ct. App. 1989) (finding that insured's attorney represented insurer as well as insurer had right to control and direct litigation), *aff'd in part & rev'd in part*, 799 P.2d 79 (Kan. 1990)

Kentucky Single Client American Ins. Ass'n v. Kentucky Bar Ass'n, 917 S.W.2d 568, 572 (Ky. 1996) (refusing to disturb ethics opinion, the court stated that interests of insured and insurer are not always alike, and attorney's duty is to the insured, not the one who is paying him, the insurer); Moore v. Roberts ex rel. Roberts, 684 S.W.2d 276, 278 (Ky. 1982) (acknowledging that insured and insurer were represented by the same counsel and strongly advising attorney that the attorney choose one client where conflict such as coverage dispute exists)

However, a federal court ruled that Kentucky is a dual client state. Lee v. ^{Medical} Protective Co., 858 F.Supp.2d 803 (E.D.Ky., 2012)

Louisiana Dual Client Hodges v. Southern Farm Bureau Cas. Inc. Co., 433 So. 2d 125, 132 (La. 1983) (recognizing that attorney represented both insurer and insured); Brasseaux v. Girouard, 214 So. 2d 401, 409 (La. Ct. App. 1968) (finding that attorney may simultaneously represent insured and insurer)

Maine Dual Client Maine Ethics Opinion #44 (1983): a lawyer may represent both an insured and an insurer, but only after observing appropriate safeguards.

Maryland Dual Client Fidelity & Cas. Co. of N.Y. v. McConaughy, 179 A.2d 117, 121 (Md. 1962) (stating that attorney can represent insured and insurer unless a conflict develops)

Massachusetts Dual Client McCourt Co. v. FPC Props., Inc., 434 N.E.2d 1234, 1235 (Mass. 1982) ("The law firm is attorney for the insured as well as the insurer.")

Michigan Single Client Michigan Millers Mut. Ins. Co. v. Bronson Plating Co., 496 N.W.2d 373, 378 (Mich. Ct. App. 1992) (stating that "[n]o attorney-client relationship exists between an insurance company and the attorney representing the insurance company's insured"), *aff'd*, 519 N.W.2d 864 (Mich. 1994); Atlanta Int'l Ins. Co. v. Bell, 475 N.W.2d 294, 297 (Mich. 1991)

Minnesota Dual Client A dual-client relationship exists for some but not all purposes. Pine Island Farmers Coop. v. Erstad & Riemer, 649 N.W.2d 444 (Minn.

2002)

Mississippi	Dual Client	Moeller v. American Guar. & Liab. Inc. Co., 707 So. 2d 1062, 1070 (Miss. 1996) (recognizing that attorney has two separate and distinct clients, insured and the insurer); Hartford Accident & Indem. Co. v. Foster, 528 So. 2d 255, 265 (Miss. 1988) (recognizing that attorney may represent insured and insurer, but insured's interests are paramount if conflict arises)
Missouri	Dual Client	In re Allstate Ins. Co., 722 S.W.2d 947, 952 (Mo. 1987) (stating that attorney may represent insured and insurer)
Montana	Single Client	In re Rules of Prof'l Conduct & Insurer Imposed Billing Rules & Procedures, 2 P.3d 806, 814 (Mont. 2000) (holding that "the insured is the sole client of defense counsel"); MO. F.E. 040809 and March 28, 2005 Supplement (affirming F.E. 040809) (attorney retained by an insurer to defend its insured is required to communicate with insured client regarding nature and scope of representation, even if the insurer does so, and is required to obtain written consent)
Nebraska	Dual Client	Hawkeye Cas. Co. v. Stoker, 48 N.W.2d 623, 632 (Neb. 1951) (stating attorney cannot represent both insurer and insured when their interests conflict); Shahan v. Hilker, 488 N.W.2d 577, 581 (Neb. 1992) ("[C]ommunication made by an insured to his liability insurance company, concerning an event which may be made the basis of a claim against him covered by the policy, is a privileged communication, as being between attorney and client, if the policy requires the company to defend him through its attorney, and the communication is intended for the information or assistance of the attorney in so defending him.")
Nevada	Dual Client	Campbell v. Maestro, 996 P.2d 412, 414 (Nev. 2000) (explaining that "dual agency" relationship exists among insured, insurer, and attorney, and insurer has right to control litigation); Stubli v. Big D Int'l Trucks, Inc., 810 P.2d 785, 788 (Nev. 1991) (Rose, J., dissenting) (recognizing attorney represents insured and insurer)
New Hampshire	Dual Client	Dumas v. State Farm Mut. Auto. Inc. Co., 274 A.2d 781, 784 (N.H. 1971) (finding communications between insurer and insured and attorney were not privileged as between them because they were both clients of attorney in previous action)
New Jersey	Dual Client	Liberman v. Employers Ins. of Wausau, 419 A.2d 417, 424 (N.J. 1980) (recognizing attorney has two clients, insured and insurer unless conflict arises, then attorney may not continue to represent

both); *Gray v. Commercial Union Ins. Co.*, 468 A.2d 721, 725 (N.J. Super. Ct. App. Div. 1983)

New Mexico	Unclear	
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New York	Dual Client	<i>Goldberg v. American Home Assurance Co.</i> , 439 N.Y.S.2d 2, 4 (App. Div. 1981) (stating attorney represented both insurer and insured)
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North Carolina	Dual Client	<i>Nationwide Mut. Fire Ins. Co. v. Bourlon</i> , 617 S.E.2d 40 (N.C. App. 2005) (citing 2003 Formal Ethics Op. 12 (Oct. 21, 2004))
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North Dakota	Unclear	
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Ohio	Dual Client	<i>Netzley v. Nationwide Mut. Ins. Co.</i> , 296 N.E.2d 550, 561 (Ohio Ct. App. 1971) (“We hold that both Nationwide [the insurer] as well as...its insured, were clients of the legal counsel retained by Nationwide.”). Rule 1.8 of Ohio Supreme Court Rules of Professional Conduct (defense counsel must obtain informed consent and deliver to insured client a copy of the “Statement of Insured Client’s Rights”).
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Oklahoma	Unclear	
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Oregon	Dual Client	<i>In re Conduct of O’Neal</i> , 683 P.2d 1352, 1356 (Or. 1984) (referencing dual representation of insurer and insured as example of situations where attorney can represent multiple clients if it is obvious lawyer can represent interests of each client without conflict). Formal Op. 2005-30 (attorney may represent insurer and insured with informed written consent)
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Pennsylvania	Dual Client	<i>Swedloff v. Philadelphia Transp. Co.</i> , 187 A.2d 152, 152-53 (Pa. 1963) (referring to insurance company and insured as clients of attorney); <i>Molitoris v. Woods</i> , 618 A.2d 985, 989 (Pa. Super. Ct. 1992) (recognizing attorney can represent both insured’s and insurer’s subrogation interest); <i>Graziani v. OneBeacon Ins. Inc.</i> , 2007 Pa. Dist. & Cnty. Dec. LEXIS 405, 2 Pa. D. & C.5th 242 (2007).
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Rhode Island	Dual Client	<i>Employers’ Fire Ins. Co. v. Beals</i> , 240 A.2d 397, 403 (R.I. 1968) (finding that if there is no conflict, or the insured consents, attorney may represent both insured and insurer), <i>abrogated on other grounds by Peerless Ins. Co. v. Viegas</i> , 667 A.2d 785 (R.I. 1995)
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South Carolina	Dual Client	<i>Chitty v. State Farm Mut. Auto. Ins. Co.</i> , 36 F.R.D. 37, 41-42 (E.D.S.C. 1964) (recognizing attorney represented insurer and
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insured; therefore, communications were not privileged)

South Dakota Dual Client Fullmer v. State Farm Ins. Co., 514 N.W.2d 861 (S.D. 1994) (allowing for dual representation but requiring withdrawal if actual conflict arises)

Tennessee Single Givens v. Mulliken ex rel. Estate of McElwaney, 75 S.W.3d 383 (Tenn. 2002) (describing as “sole client” in case holding that insurer could be vicariously liable for acts of attorney when it “directed, commanded or knowingly authorized” an attorney's acts.) *See also* Petition of Youngblood, 895 S.W.2d 322 (Tenn. 1995)

Texas Dual Client Unauthorized Practice of Law Comm. v. Am. Home Assur. Co., 261 S.W.3d 24 (Tex. 2008) (attorney “owes the insured the same type of unqualified loyalty as if he had been originally employed by the insured. *See* Unauthorized Practice of Law Committee v. Nationwide Mutual Ins. Co., 155 S.W.3d 590, 598 (Tex. Civ. App. 2004) (“We hold an insurance company does not engage in the unauthorized practice of law when it uses internal staff attorneys to defend its insureds.”); American Home Assurance Co., Inc. and The Travelers Indem. Co. v. Unauthorized Practice of Law Comm., 121 S.W.3d 831 (Tex. Civ. App. 2003) (“It is a fiction to say that the insured is the only client in view of the contractual relationship.”). *But see* Bradt v. West, 892 S.W.2d 56 (Tex. Civ. App. 1994) (saying there is single client in case involving liability for acts of attorney).

Utah Dual Client in some circumstances Spratley v. State Farm, 78 P.3d 603 (Utah 2003) (following the Arizona Supreme Court approach in *Paradigm*, 200 Ariz. 146, 24 P.3d 593)

Vermont Dual Client In re Illuzzi, 632 A.2d 346, 355 (Vt. 1993) (finding plaintiff's attorney violated ethics rules by speaking directly to insurer instead of communicating through attorney hired to defend insured; dissent as to sanction affirms that, at beginning of litigation, attorney may represent both insured and insurer, but if conflict arises, he may only represent insured)

Virginia Dual Client State Farm Mut. Auto. Ins. Co. v. Floyd, 366 S.E.2d 93, 97 (Va. 1988) (“During their representation of both insurer and insured, attorneys have duty to convey settlement offers to insured...”); Norman v. Insurance Co. of N. Am., 239 S.E.2d 902, 907 (Va. 1978) (“[A]n insurer's attorney, employed to represent an insured, is bound by the same high standards.”)

Washington Dual Client Barry v. USAA, 989 P.2d 1172, 1175 (Wash. Ct. App. 1999) (noting

that normally attorney operates on behalf of two clients, insurer and insured)

West Virginia Single Client State ex rel. Allstate Ins. Co. v. Gaughan, 508 S.E.2d 75, 88 (W. Va. 1998) (disagreeing with majority view that attorney represents both insurer and insured; instead, attorney represents insured)

Wisconsin Dual Client Roeske v. Deifenbach, 226 N.W.2d 666, 668 (Wis. 1975) (recognizing attorney represented both insured and insurer, but on appeal this was not appropriate because there was conflict of interest); Wisconsin Patients' Comp. Fund v. Physicians' Ins. Co. v. Wisconsin, Inc., 239 Wis. 2d 360, 620 N.W.2d 457 (2000)

Wyoming Dual Client Suchta v. Robinett, 596 P.2d 1380, 1385 (Wyo. 1979) (suggesting attorney represents insurer and insured: "Both clients, the paying one and the one who had the company's attorney assigned to him...")