

You advised that during the course of his representation of ABC Corp., a lawyer drafted an agreement between ABC Corp. and DEF Corp. The presidents of the respective corporations then negotiated certain changes to the agreement. The lawyer did not participate in any of these negotiations. The changes were reported to the lawyer by the president of ABC Corp. and the lawyer made the changes in the agreement. ABC Corp. has now filed suit against DEF Corp. for breach of the agreement.

You wish to know whether the attorney who prepared the agreement for ABC Corp. may now represent ABC Corp. in its suit against DEF Corp.

Based upon the limited facts stated in your inquiry the Committee opines that there would be nothing unethical per se for the attorney to represent ABC Corp. in its suit against DEF Corp. Nothing in the facts which you present indicates that IDEF Corp. was ever a client of the lawyer, and therefore DR:4-101, regarding the preservation of confidences and secrets of a client, is inapplicable.

Likewise, nothing in the facts presented indicates that the lawyer will be called as a witness by one of the parties, and therefore DR:5-102 does not appear to be applicable. Of course, if the lawyer is called as a witness by one of the parties then the lawyer must comply with requirements of DR:5-102.

Committee Opinion
August 11, 1988

Editor's Note. – See also L E Op. No. 1129.