

You have advised that Lawyer Green represents ABC Corporation and was retained by ABC to draft an agreement between ABC and DEF corporations. Lawyer Green did not participate in any way on the negotiations, which were handled by the presidents of ABC and DEF corporations. ABC Corporation's president reported changes in the agreement to Lawyer Green, who then prepared an agreement in compliance thereof. In addition, ABC Corporation, which owed a substantial fee to Lawyer Green, negotiated a provision in the agreement whereby if the joint venture obtained a specified level of sales, the venture would be set up as a subsidiary of DEF Corporation, and Lawyer Green would receive 20 percent of the stock in the subsidiary.

Before the aforementioned provision became operative and after substantial performance by ABC Corporation, DEF Corporation terminated the agreement. Now ABC Corporation has filed suit against DEF Corporation for fees allegedly earned prior to the alleged breach, as well as for future fees had the agreement not been breached.

You wish to know whether Lawyer Green may represent ABC Corporation in the breach of contract litigation if no claim is made concerning the subsidiary formation under the provision in the agreement, and Lawyer Green makes no claim for any rights under the provision in the agreement. As there is nothing in the facts you have presented indicating that DEF Corporation was ever a client of Lawyer Green, the committee will assume therefore that DR:4-101, regarding the preservation of confidences and secrets of a client, is not an issue which should be raised.

Disciplinary Rule 5-101(A) [DR:5-101] is the appropriate and controlling rule in this situation, which states that an attorney may not accept employment if the exercise of his independent professional judgment on behalf of his client is affected by a financial, business, property or personal interest, except with the client's consent after full disclosure under the circumstances. An attorney should exercise his own professional judgment solely for the benefit of his client, free from compromising influences; his loyalty to his client should not be diluted by his own personal interest. (See EC:5-1)

The Committee opines that it would not be improper, under the facts as you have presented them in your inquiry, for Lawyer Green to represent his corporate client in the pending breach of contract litigation, if his professional judgment on behalf of the client is not impaired by his own personal interest or any rights which he may claim and consent is given by the client after full and adequate disclosure as provided under DR:5-101(A).

L E Op. No. 932 provides that it is not improper for an attorney who was named residual legatee and given power of attorney by the testator, who since has been declared incompetent, to be appointed as committee and continue in this capacity, as long as he can exercise his independent professional judgment on behalf of the incompetent without being affected by his personal interest.

Committee Opinion
October 28, 1988

Editor's Note. – See also L E Op. No. 1126.