

You have presented a hypothetical situation in which Attorney Z is counsel for a Virginia corporation which consists of six shareholders. The attorney represents the corporation in most of its legal affairs and acts as registered agent.

The six shareholders made a written agreement, which includes the corporation as a party, shortly after its incorporation. The agreement covers several areas such as the purchase of stock upon the death of a shareholder. One provision of the shareholder agreement provides that “the shareholders agree that they shall vote their shares and otherwise act so as to provide that the directors of the corporation shall be six in number”. The agreement then enumerates the six shareholders as the named six directors.

The agreement then provides “That the officers of the corporation shall be Shareholder X as president and Shareholder Y as vice president and secretary.” Shareholder X never had a separate contract for employment as president.

Attorney Z was not counsel for any party at the time the agreement was drawn or for incorporation.

Several years after the agreement, four of the six shareholder/directors who hold 65% of the corporation's outstanding stock, held a board of directors' meeting to replace Shareholder X as president of the corporation. The meeting was properly called and conducted. The four shareholders present held the view that Shareholder X needed to be removed, for cause, due to management conflicts, financial problems and other problems.

Shareholder X may now sue the shareholders in their individual capacities for permitting themselves as directors to remove him as president. If such a suit is brought against the shareholders individually, it may or may not also name the corporation as a defendant.

You have asked the Committee to opine whether, under the facts of the inquiry, Attorney Z may represent the four shareholders, who also constitute the majority of the board of directors that voted Shareholder X out as president, while also representing the corporation.

The appropriate and controlling Disciplinary Rules related to your inquiry are DR:5-105, which dictates that a lawyer must refuse to accept or continue employment if the interests of another client may impair the independent professional judgment of the lawyer; and DR:4-101 which requires a lawyer to preserve the confidences and secrets of a client. Further guidance is available through Ethical Consideration 5-18 [EC:5-18] which, in pertinent part, exhorts the lawyer to recognize that (1) a lawyer employed or retained by a corporation or similar entity owes his allegiance to the entity and not to a stockholder, director, officer, employee, representative, or other person connected with the entity, and (2) on occasions when a lawyer for an entity is requested by a stockholder, director, officer, employee, representative, or other person connected with the entity to represent him in an individual capacity, the lawyer may serve the individual only if the lawyer is convinced that differing interests are not present.

You state that Attorney Z was not counsel for any party at the time the shareholder agreement was drawn or for incorporation. Assuming that Attorney Z has neither represented Shareholder X nor met with or received confidences as to the corporation or otherwise from Shareholder X, the Committee opines that representation of the corporation and the four shareholders would not be improper under DR:5-105. Thus, under the facts you have presented, which assume that the interests of the shareholders and the corporation are not adverse, it would not be improper for Attorney Z to represent all, even if X files suit and names all as defendants. *See* LE Op. 384, LE Op. 1458.

The Committee cautions, however, that should any potential adversity mature into an actual conflict between the shareholders and the corporation, the dictates of DR:5-105(B) and (C) would require that Attorney Z withdraw from representation of both the shareholders and the corporate entity.

Committee Opinion
December 14, 1992