

You advise that an attorney has performed work for a closely-held corporation consisting of collections of retail accounts, all of which have been concluded. You wish to know whether or not said attorney may represent one of the two 50 percent stockholders in the closely-held corporation in litigation concerning one of the shareholder's right to open a competing business under a different corporate name. You wish to know whether there is a distinction between a "corporate attorney" and the attorney described above whose sole involvement with the corporation has been routine collection matters or other incidental legal services totally unrelated to corporate structure, corporate policy, or the relationship between the shareholders in the closely-held corporation.

Disciplinary Rule 5-105(D) [DR:5-105] states that "a lawyer who has represented a client in a matter shall not thereafter represent another person in the same or substantially related matter if the interest of that person is adverse in any material respect to the former client unless the former client consents after disclosure". If you no longer represent the corporation on collection matters, under DR:5-105(D), since the two matters are not the same or substantially related, it would not be improper for you to represent one of the 50 percent shareholders.

If, however, you continue to represent the corporation in collection matters, DR:5-105(A) would apply. That Disciplinary Rule states that "a lawyer shall decline proffered employment if the exercise of his independent professional judgment on behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment, except to the extent permitted under DR:5-105(C)." Under DR:5-105(C), "a lawyer may represent multiple clients if it is obvious that he can adequately represent the interest of each and if each consents to the representation after full disclosure of the possible effect of such representation of the exercise of his independent professional judgment on behalf of each."

Committee Opinion
November 4, 1987