

Committee Opinion
April 18, 1988

LEGAL ETHICS OPINION 1066

CONFLICT OF INTEREST –
REPRESENTING CLIENT ADVERSE TO
FORMER CLIENT.

You advise that you regularly represent a corporation. In June of 1986, you began representing one of the corporation's employees in a contract dispute over the building of the employee's personal residence. In March, 1987, you terminated your representation of the employee because the individual on the other side of the suit and his family began attending the church which you attend. You referred the employee to another attorney. You state that the employee has not paid you any money nor has he paid your firm any money although he was and has been billed. The employee left the employment of the corporation in February, 1988. It now appears that he has violated a noncompete agreement which he signed during his employment with the corporation.

You wish to know whether or not you may represent the corporation against the employee.

Your inquiry is controlled by DR:5-105(D) and DR:4-101(B)(2) and (3). Disciplinary Rule 5-105(D) 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 interests of the former client unless the former client consents after disclosure." It does not appear from the facts provided in your letter that the matter in which you wish to represent the corporation against the former client is a matter that is "the same or substantially related" to the matter of the former client's representation. The Committee therefore opines that you would not violate DR:5-105(D) in this instance.

Disciplinary Rule 4-101(B)(2) [DR:4-101] states that "a lawyer shall not knowingly use a confidence or secret of his client to the disadvantage of the client." Disciplinary Rule 4-101(B)(3) states that "a lawyer shall not knowingly use a confidence or secret of his client for the advantage of himself or a third person unless the client consents after full disclosure." The Committee opines that it would not be improper for you to represent the corporation in this matter as long as you gained no confidences and secrets of the employee during your prior representation which could be used to his disadvantage or to the advantage of the corporation in the current case.

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