

Committee Opinion
February 16, 1989

LEGAL ETHICS OPINION 1194

CONFIDENTIALITY – MULTIPLE
REPRESENTATION: REPRESENTING A
CLIENT IN AN ADVERSE ACTION TO A
FORMER CLIENT.

You have advised that you have represented franchisees from the inception of their operation, approximately three years ago. Approximately eighteen months after the inception of their operation, you represented the same franchisees in their dispute with the franchisor, and that dispute was resolved with a secret settlement of a substantial monetary payment to the franchisees. Subsequent to that situation you performed computer based research for the franchisor, after having obtained the consent of the franchisee, which research consisted of information and assessment of the strategy and tactics of a Boston lawyer who was preparing a class action on behalf of numerous franchisees. You indicate that you obtained no information relative to the franchisor during the course of your preparation of the research. A new dispute has arisen between the franchisees and the franchisor, and you wish to know whether you may proceed to represent the franchisees against the franchisor.

The Committee directs your attention to LE Op. 441 and DR:5-105(C) and (D) in which the Committee opined that the mere fact that a lawyer has formerly represented a person who is now the adverse party in a suit brought by the lawyer on behalf of another client is not sufficient to warrant disqualification of the lawyer on ethical grounds. However, a violation of DR:4-101(B) may result if the lawyer possessed confidential information which he obtained from his first client. (See also LE Op. 672 and LE Op. 792)

The Committee would opine that even though an attorney-client relationship may have in fact existed between the attorney and the franchisor, if it is determined that the current dispute is not substantially related or materially adverse in any respect to a prior representation and the attorney did not gain secrets or confidential information concerning the franchisor, the continued representation of the franchisee in the current dispute would be ethically permissible.

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