

You have advised that Attorney was employed as in-house counsel for Company A for a period of approximately seven years, during which time Company B was, and remains, a subsidiary or affiliate of Company A. During the time of Attorney's employment with Company A, Client C wrote a letter to Company B relating to payments due under a lease which predated Attorney's employment with Company A, although Client C had no dispute regarding the lease or any other matter with either Company A or Company B at that time. In response to Client C's letter, Attorney wrote an in-house memorandum to Company A's accounting department and, in preparation of the internal memorandum, reviewed the vault file which, at that time, contained only the lease document and transmittal letters, but no legal opinions or operational information.

You further indicate that Attorney left the employ of Company A and is currently engaged in a solo law practice in Virginia. Subsequent to Attorney having left Company A, Client C became a party to a contract prepared by Company B.

Sometime later, Client C engaged Attorney to represent C in the review and negotiation of an extension of that contract. At the time of employment by Client C, Attorney had no independent recollection of reviewing any documents or taking any action on matters between Client C and Company B, and had obtained no confidences or secrets related to Client C of either Company A or Company B during his employment. Client C similarly had no recollection of meeting or otherwise dealing with Attorney prior to employing Attorney. You posit that the representation by Attorney of Client C relates to the conduct of Company B arising after Attorney left employment with Company A. Furthermore, the representation is adverse to Company B, but the matter does not involve the matter discussed in Client C's 1984 letter or Attorney's 1984 memorandum.

You indicate that Company A objects to Attorney representing Client C in the current matter which is adverse to Company B, and you request that the Committee consider the propriety of Attorney continuing to represent Client C.

The appropriate and controlling disciplinary rule relative to your inquiry is DR:5-105(D) which dictates 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 interest of the former client unless the former client consents after disclosure. (emphasis added)

The Committee has repeatedly opined that the earlier representation of a client who is now the adverse party in a suit brought on behalf of another client is not *per se* sufficient to warrant disqualification of the lawyer on ethical grounds. See, e.g., LE Op. 1194, LE Op. 1139. Additional critical factors to the determination of disqualification are the

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relatedness of the two matters and the issue of whether the lawyer obtained secrets and confidences of the first client in the course of the representation.

Assuming the validity of the facts as you have provided them, which facts indicate that, since the contract was originally prepared approximately two years after Attorney left the employ of Company A, the matter in question is not the same as the lease matter on which Attorney worked on behalf of Company A, those facts demonstrate that there is no substantial relatedness between the matters. Furthermore, again assuming the validity of the facts provided, there is no indication that any secrets and confidences of Company A relative to the matter in question were obtained by Attorney. Therefore, the Committee is of the opinion that there is no *per se* impropriety in Attorney's continued representation of Client C under the facts as presented.

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