

Committee Opinion
June 14, 1994

LEGAL ETHICS OPINION 1596

CONFLICT OF INTEREST — FORMER
CLIENT: ATTORNEY REPRESENTING
NEW CLIENT ADVERSE TO FORMER
CORPORATE CLIENT.

You have presented a hypothetical situation in which Attorney was employed, between 1989 and 1990, by President of Corporation X to handle certain legal matters related to claims against President and Corporation X concerning the alleged services performed by a consultant and certain other claims. These matters were handled to the full satisfaction of President. When President resigned in June 1990, Attorney's relationship with Corporation X terminated. Since June 1990, Attorney has not handled any legal matters for Corporation X. New managers took over Corporation X, and Attorney had no relationship with them.

In 1993, Attorney was contacted by Ms. R, who had worked for Corporation X in a branch office. Ms. R had no knowledge about the matters for which Attorney represented Corporation X in 1989 and 1990. Before contacting Attorney, Ms. R had been told that she had been defamed by an employee of Corporation X regarding her professional character and reputation. The alleged defamation occurred after Attorney's disassociation with Corporation X. Ms. R wanted to retain Attorney to sue Corporation X for defamation and possible illegal discharge by the new managers of Corporation X.

You further indicate that the alleged defamatory statements about Ms. R were not related to matters on which Attorney had represented Corporation X. The subject matter of Ms. R's claims (defamation and possible illegal discharge) is unrelated to the subject matter of Attorney's earlier representation of former President (claims for compensation for consulting services). You indicate that there was no substantial relatedness between the two matters, separated both in substance and in time by several years, and no confidences or secrets were or are involved. Attorney was not privy to any of Corporation X's confidential information and you indicate that any confidences or secrets Attorney may have had in connection with his representation of former President are not related to Ms. R's case.

Furthermore, you indicate that Attorney has obtained an affidavit from former President of Corporation X stating under oath that the charges against her and Corporation X in 1989 and 1990 were "totally independent of and had no relation to Ms. [R] in any way. Ms. [R] was not aware of any pertinent facts about these claims since, among other things, she worked in a different office."

You have asked the committee to opine whether, under the facts of the inquiry, it is improper for Attorney to represent a former employee of Corporation X against Corporation X, Attorney's former client.

The appropriate and controlling Disciplinary Rules related to your inquiry are DR:4-101, which provides, in pertinent part, that an attorney should preserve a client's confidences and secrets; and DR:5-105(D), which states that a lawyer who has

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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.

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. 1399, LE Op. 1194, LE Op. 1139. *See also City of Cleveland v. Cleveland Elec. Illuminating*, 440 F. Supp. 193, 208 (N.D. Ohio 1977). Additional critical factors to the determination of disqualification are the 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 facts as you have provided them, which facts indicate that Attorney represented President and Corporation X on matters unrelated to the issues for which Ms. R seeks Attorney's representation, the committee is of the opinion that those facts demonstrate no substantial relatedness between the previous and subsequent representations. *See* LE Op. 1399. Furthermore, again assuming the facts provided, there is no indication that any secrets or confidences of President or Corporation X relative to R's claims of defamation and illegal discharge were obtained by Attorney. Attorney's familiarity with the Corporation's operations or the personalities of its management, without more, is not a disqualifying conflict of interest. *Rogers v. The Pittston Co.*, 800 F. Supp. 350 (W.D. Va. 1992). Therefore, the committee opines that there is no *per se* impropriety in Attorney's continued representation of Ms. R under the circumstances as presented. However, the committee cautions that should it be determined by a finder of fact that either the matters were substantially related or that Attorney did in fact receive secrets and confidences of President or Corporation X, it might then be necessary for Attorney to withdraw from representation of Ms. R. *See* LE Op. 1456.

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