

LEGAL ETHICS OPINION 1685

CONFLICT OF INTERESTS;
REPRESENTING SPOUSE OF
STOCKHOLDER OF CORPORATION FOR
WHICH ATTORNEY HANDLED
COLLECTIONS AND PREPARED
CORPORATE MINUTES.

You have presented a hypothetical situation in which Attorney represented a corporation in the past. Attorney's work for the corporation included preparation of minutes, mechanic's lien litigation, collections and landlord matters. The Attorney did not perform any work necessitating an evaluation of the corporation or any review of financial records of the corporation. The corporation now has one remaining stockholder, who has never been represented by Attorney as an individual. That sole stockholder's spouse has approached Attorney for representation in a divorce.

Under the facts you presented, you have asked the committee to opine as to whether Attorney has a conflict of interest in representing the wife of a stockholder in a corporation previously represented by Attorney, when Attorney has no knowledge of the financial status of the corporation and has never represented the stockholder individually.

The appropriate and controlling disciplinary rules relative to your inquiry are DR:4-101(A) which defines a "confidence" as information protected by the attorney-client privilege under applicable law, and "secret" as other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or likely to be detrimental to the client; DR:4-101(B) which precludes a lawyer from knowingly revealing a client's confidence or secret and from using a client's confidence or secret to the disadvantage of the client or to the advantage of the lawyer or a third person; and DR:5-105(D) which provides 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. Further guidance is available through Ethical Consideration 5-18 which, in pertinent part, exhorts the lawyer to recognize that a lawyer employed or retained by a corporation or similar entity owes his allegiance to the entity and not to a stockholder, director, officer, employee, representative, or other person connected with the entity.

Pursuant to DR:5-105, the committee has previously opined that an attorney who had represented a partnership may represent one partner in bringing a suit on behalf of the partnership against other partners so long as the attorney neither represented the defendant partner individually and provided that the attorney never obtained confidences or secrets from that defendant partner during the course of the attorney's representation of the partnership. *See*, LE Op. 1458. Also, the committee previously opined that an attorney who had represented a corporation may represent a plaintiff shareholder against a fellow shareholder in a derivative action as the attorney had not represented the defendant shareholder individually and so long as the attorney had never obtained confidences or secrets from that defendant shareholder during the course of the representation of the corporation. *See*, LE Op. 1517.

The Committee opined in LE Op. 344, however, that it was not ethically permissible for a lawyer to represent a party against a corporation when one person owned all of the stock and the lawyer represented the sole shareholder in other matters. In that circumstance, there may be an imputed identity between the corporation and the sole stockholder. *See* ABA Formal Op. 95-390.

Committee Opinion
September 23, 1996

The facts presented do not, however, suggest an imputed attorney-client relationship with the remaining stockholder of the corporation.

Therefore, in response to your inquiry, the committee opines that the Attorney may represent the shareholder's spouse in the divorce, as attorney never represented the shareholder individually, so long as no confidences or secrets were obtained from that shareholder or the corporation during attorney's representation of the corporation that would be pertinent to the divorce action.