



## Committee on Professional Ethics

Opinion #395 - 6/10/75 (19-75) Topic: Conflict of interest; confidences of former client.

Digest: Former lawyer for corporation may not represent stockholder in action against former president, individually, unless no disclosure of confidential information is required.

Code: Canon 4, 9;  
DR 4-101(B),(C); 5-105(A),(B);  
EC 4-5, 4-6, 9-2;

### QUESTION

May a lawyer who previously represented a corporation, represent a stockholder in an action against the former president of the corporation, individually, arising out of the former president's alleged fraud in the sale of the corporation's stock to the stockholder?

### OPINION

The proposed representation of the stockholder by the lawyer would run afoul of both Canon 4, requiring lawyers to preserve the confidence and secrets of clients, and Canon 9, enjoining lawyers to avoid even the appearance of impropriety.

In his representation of the stockholders, it is entirely possible that the lawyer will be called upon to use or to disclose confidences or secrets reposed in him while he was a lawyer for the corporation, in violation of DR 4-101(B). The obligation to preserve such information outlasts the lawyer's employment. EC 4-6. The nature of his prior representation of the corporation suggests the strong possibility that the lawyer actually had confidential information or had access to confidential information during such representation which would be relevant in establishing the truth or falsity of representations concerning the corporation's stock. Moreover, a lawyer should not accept employment that might require the disclosure of the confidences and secrets of one client to another. EC 4-5.

To permit the lawyer to represent the stockholders would undermine the essence of Canon 4 which fosters open and free discussion between lawyers and clients and which encourages lawyers to obtain information concerning their clients beyond that volunteered by them. If corporate officers feared that disclosures made by them to the lawyer retained by their corporation could be used against them at a later time, such corporate officers might be inhibited from seeking legal assistance on behalf of their corporation and the lawyer's ability to represent corporate clients would be impaired.

In addition, for the lawyer to represent a stockholder of a former corporate client against such corporation's former president

in a suit involving matters substantially related to matters wherein he formerly acted for the corporation would at the very least create an appearance of impropriety. Accordingly, even though the former president was never himself a client of the lawyer and the lawyer's loyalty to the corporation did not necessarily extend to its president, the appearance might be created that the stockholders chose the particular lawyer because of his special knowledge concerning the affairs of his former client obtained while representing such former corporate client. Public confidence in the legal profession might be undermined if it appeared that a lawyer had gained useful information concerning the subject matter of a suit by his present clients during the course of his representation of a former client. Canon 9; EC 9-2.

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