

MINUTES

COMMITTEE: Ethics Committee

DATE: December 6, 2001

7. CHAPTER 6, RULE 7: WHETHER LAWYER ACTING IN A CONFLICT

A lawyer has asked whether he would be acting in a conflict if he represents a client who is involved in litigation with a former client, Mr. S, and the company of which Mr. S is a director, F Company. The lawyer acts for C Company in an action against Mr. S and F Company for monies owing to C Company pursuant to an agreement under which C Company would do work as a general contractor for F Company. Mr. S is a director of F Company. C Company alleges that F Company and Mr. S were unjustly enriched by certain actions in relation to the agreement.

The Committee noted that the work the lawyer has been retained to perform for C Company relates to the same project on the same premises as a lien search he was previously asked to perform for F Company, although counsel at a different firm than the lawyer removed the liens for F Company. In addition, in the course of his consultation with the lawyer on behalf of F Company on the liens matter, Mr. S discussed the work that C Company had performed for F Company. The lawyer says his note discloses that Mr. S provided certain information to him including information that C Company was claiming "\$250,000, had a good product and was out of control."

In view of these facts, it was the Committee's opinion that it cannot be said that the work the lawyer was intending to perform for C Company was substantially unrelated to the work that he previously did for F Company. Moreover, the confidential information the lawyer had as a result of the work he did for F Company might reasonably affect the new representation for C Company. For these reasons, the Committee was of the opinion that the lawyer is prevented by Chapter 6, Rule 7 of the *Professional Conduct Handbook* from acting for C Company in the matter.

JO:jeh
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