

COMMITTEE: Professional Standards

DATE: November 14, 1994

8. WHETHER FORMER EMPLOYEE OF A CORPORATE PLAINTIFF IS A PARTY OR A WITNESS - PROFESSIONAL CONDUCT HANDBOOK CHAPTER 8, RULE 11

The Committee considered a request by a lawyer to determine whether a former employee of a corporate litigant was a witness or a party. The lawyer is representing the defendant in proceedings where the corporation is plaintiff. Counsel for the plaintiff is intending to produce the former employee as the person to be examined on behalf of the plaintiff.

Given that the former employee was to be produced as the person to be examined on an Examination for Discovery, the Committee was not prepared to say that the ordinary rule (Rule 11 of Chapter 8*) does not apply. The result is that the former employee should be treated as a party.

* Now Chapter 4, Rule 1.1 of *Professional Conduct Handbook* as of 04/96