
**E-84-14 Lawyer calling shareholder or employee
as expert witness in divorce proceeding**

Question

Formal Opinion E-83-23, Wis. Bar Bull., June 1984, at 87 stated that it is improper for a lawyer to call a partner as an expert witness in a divorce case. Does Formal Opinion E-83-23 also apply to shareholders of a professional corporation, employee lawyers of a professional corporation and non-lawyer employees (e.g., accountants) of either a partnership or professional corporation?

Opinion

Formal Opinion E-83-23 equally applies to shareholders and employee lawyers of a professional corporation as the same concerns present in the fact situation of that opinion are present with such persons. If shareholders and employee lawyers were to testify in a divorce proceeding for a client of a lawyer from the same firm, the case would be presented “through the testimony of an obviously interested witness” and the lawyer would be put in the “unseemly position” of arguing the credibility of a lawyer from his or her law firm. Also, whether directly or indirectly, such persons have financial interest in the solvency of the law firm and are therefore “at least financially interested in the outcome of the case.” Accordingly, calling either a shareholder or employee lawyer of a professional corporation as an expert witness in a divorce proceeding would be improper. *But see* SCR 20.24(2).

The Wisconsin Code of Professional Responsibility, however, does not appear to prohibit a lawyer from calling a nonlawyer employee of his or her partnership or professional corporation as an expert witness in a divorce proceeding.