
E-85-8 Representation adverse to former client

Facts

In 1982, a partner in law firm Z defended a former farm implement dealership against the grantor of the dealership in a collection action that was brought after termination of the dealership. As a result of the representation, the partner became familiar with the workings of the dealer's business record keeping methods. The case was settled in 1982, and law firm Z has not represented the dealer since then.

Currently, the dealership is attempting to collect the remainder of a bill plus interest for the sale and installation of a milking system to X. X's defense are: (1) the bill is not owed because the work was not completed as originally agreed; and (2) the system was either defective or improperly installed causing a stray voltage problem that resulted in damage to X.

Question

In light of the partner's previous representation of the dealership, may law firm Z represent X (1) in defense of the dealer's collection action, and (2) as plaintiff in his claim for damage due to stray voltage?

Opinion

1. Upon the facts as submitted, it would be permissible for law firm Z to represent X in defense of the dealer's collection action.

Formal Opinion E-76-4, 57 Wis. Bar Bull. 56 (June 1984) states the general rule with regard to representations adverse to former clients. In that opinion, the Committee on Professional Ethics stated that a lawyer cannot represent a party opposing a former client in a *related matter* even though the lawyer acquired no knowledge in the former representation that might subsequently disadvantage the former client [citing *Marketti v. Fitzsimmons*, 373 F. Supp. 673 (W.D. Wis. 1974) (emphasis added)]. See ABA Model Rule of Professional Conduct (hereinafter MRPC) 1.9(a) [reprinted in 57 Wis. Bar Bull. 68 (November 1984)].

The scope of “related matter” depends on the facts of a particular situation or transaction. MRPC 1.9 (comment). For instance, when a lawyer has been directly involved in a specific transaction, subsequent representation of other clients with materially adverse interests clearly is prohibited. *Id.* On the other hand, a lawyer who recurrently handled a type of problem for a former client is not precluded from later representing another client in a wholly distinct problem of that type even though the subsequent representation involves a position adverse to the prior client. *Id.* The underlying question is whether the lawyer was so involved in the matter that the subsequent representation can be justly regarded as a changing of sides in the matter in question. MRPC 1.9(a)(comment).

Upon the facts submitted, the proposed representation adverse to the former client would be permissible in light of the fact that it does not appear to involve a “related matter.” Rather, the proposed representation appears to involve a wholly distinct problem and does not constitute a changing of sides in the matter in question.

It should be noted that information acquired by the partner in the course of representing the former farm implement dealership may not be used in the proposed representation to the disadvantage of the former client. MRPC 1.9 (comment); Wisconsin Supreme Court Rule 20.21(6) (lawyer’s obligation to preserve confidences and secrets of client continues after termination of employment). However, the fact that a lawyer has once served a client does not preclude the lawyer from using generally known information about that client when later representing another client. MRPC 1.9 (comment). Finally, it should be noted that the current client should be informed of the previous representation of that dealership. *See* SCR 20.23(4)(a).

2. For the reasons discussed above, it would be permissible for law firm Z to represent X as plaintiff in his claim for damage due to stray voltage.