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**E-85-9      Representation adverse to former client:  
Firm representing lending institution in  
foreclosure action against former client  
for whom firm rendered title opinion**

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**Question**

It is permissible for a lawyer to represent a lending institution in a foreclosure action against a former client for whom the lawyer was retained to render a title opinion on the subject premises?

**Opinion**

The Committee on Professional Ethics addressed issues surrounding representations adverse to former clients in Formal Opinion E-76-4, 57 Wis. Bar Bull. 56 (June 1984) and in Formal Opinion E-85-8, 58 Wis. Bar Bull. (October 1985). These opinions stated that a lawyer cannot represent a party opposing a former client in a related matter even though the attorney 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)]. See ABA Model Rule of Professional Conduct (hereinafter MRPC) 1.9(a) [reprinted in 57 Wis. Bar Bull. 68 (November 1984)].

The concerns underlying this prohibition are the potential for violation of the lawyer's duty of loyalty to a client which continues even after the termination of the lawyer-client relationship, as well as a potential appearance of impropriety. See Wisconsin Supreme Court Rule (hereinafter SCR) 20.21(6), SCR 20.23 and SCR 20.48.

The issue turns on whether the subject matter of the former relationship is substantially related to the subject matter of the present representation. See ABA Informal Opinion 1322 (March 31, 1985). Whether a "matter" is substantially related depends on the facts of a particular situation or transaction. MRPC 1.9 (comment).

In light of the above, a lawyer who was retained to render a title opinion for a purchaser may under the Code of Professional Responsibility thereafter repre-

E-85-9

WISCONSIN ETHICS OPINIONS

sent the lending institution in a foreclosure action in those situations in which the issues raised in the title opinion are unrelated to the merits of the foreclosure action. Informal Opinion 211, 57 Mich. St. B.J. 320 (Special Issue, February 1978).