
**E-87-3 Disqualification: Former house
counsel's representation of clients
against former corporate employer**

Question

May a former house counsel for a corporate employer represent clients against his or her former corporate employer/client in matters not pending prior to or at the time of his or her termination of employment?

Opinion

No *per se* proscription against the proposed representation exists. *See, e.g.*, Committee on Professional Ethics Formal Opinions E-79-1, E-85-8, E-85-9 and E-85-10. *See also generally United States Football League v. National Football League*, 605 F. Supp. 1448 (S.D.N.Y. 1985); Morgan, "Conflicts of Interest and the Former Client," 1980 Am. Bar Found. Res. J. 993; and Annot., 52 A.L.R. 1243 (1957). However, confidences and secrets of a former corporate employer may not be disclosed to others or used to a corporation's disadvantage by its former house counsel. SCR 20.22(1). And disqualification may or may not result on a case-by-case basis applying the "three-level inquiry" recited in *LaSalle National Bank v. County of Lake*, 703 F.2d 252, 255-56 (7th Cir. 1983):

First, the trial judge must make a factual reconstruction of the scope of the prior legal representation. Second, it must be determined whether it is reasonable to infer that the confidential information allegedly given would have been given to a lawyer representing a client in those matters. Third, it must be determined whether that information is relevant to the issues raised in the litigation pending against the former client. *Westinghouse Electric Corp. v. Gulf Oil Corp.*, 588 F.2d. 221. 225 (7th Cir. 1978); *Novo Terapeutisk Laboratorium v. Baxter Travenol Labs, Inc.*, 607 F.2d 186, 195 (7th Cir. 1979) (en banc).

If, after evaluating the facts of this case according to this three-part standard, we find that such a substantial relationship did exist, we are entitled to presume that the attorney received confidential information during his prior representation. *Schloetter*, 546 F.2d at 710. This presumption, however, is a rebuttable one.