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**E-79-7 Representation of business partners**

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**Facts**

Attorney A was employed by B and C, who had been partners in a business venture and wished to incorporate. He met with the two men, both individually and as a group, on an extensive basis. He then drew up the necessary papers for incorporation but B and C then abandoned the idea and the papers were never executed. B continued to operate the business alone and under the corporate name. Several months later, he terminated his relationship with A. Nearly a year after the last meeting between A, B, and C, C asked if there would be an annual meeting of the corporation. Apparently misinformed concerning the final results of the earlier meetings, A told C that the corporation had never been formed. C now has asked A to represent him in an action to recover his share of the partnership assets, which would require commencing such action against B.

**Question**

May an attorney ethically represent a client in an action against a former client?

**Opinion**

Canons 4 and 5 of the Code of Professional Responsibility would appear to govern the propriety of an attorney representing a party in an action against a former client. DR 4-101(B)(1)-(3) prohibits an attorney from revealing or using to the former client's disadvantage, or to another's advantage, any confidence or secret of the former client. The exceptions set forth are not relevant.

In addition, EC 4-6 notes: "The obligation of a lawyer to preserve the confidences and secrets of his client continues after the termination of his employment."

DR 5-105(A) specifically recites: "A lawyer shall decline proffered employment if the exercise of his independent judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered

employment, except to the extent permitted under DR 5-105(C).” (The exception is not material.)

The committee’s conclusion is supported by ABA Informal Opinion 1322 and 885, the analysis of which is not reprinted here.

### **Conclusion**

It is the committee’s opinion that in the situation before this committee, you may not represent C in an action against your former client B. Since you were acting as counsel to both B and C, prior to the proposed litigation, your duty to both of them extends beyond the period of actual employment. It is thus not material that B terminated his relationship with A several months prior to the conflict. Only if an attorney performs a purely ministerial service for his client, such as filing the already completed incorporation papers, would there be reason to allow him to subsequently represent one client against the other. When, as in this case, the attorney performs various professional and counseling services, he may not undertake such representation and if he did so, it would be our opinion that he would be in violation of DR 4-101(B), DR 5-105(A), and DR 5-105(B).