KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-387
Issued: November 1995

Since the adoption of the Rules of Professional Conduct in 1990, the Kentucky Supreme Court has adopted various amendments, and made substantial revisions in 2009. For example, this opinion refers to Rule 1.10, which was amended and now permits screening, with written notice to the former client, to avoid imputation. Lawyers should consult the current version of the rules and comments, SCR 3.130 (available at http://www.kybar.org), before relying on this opinion.

Question: May a former "in-house" lawyer for a corporation or other entity [see Rule 1.13] represent a client in a matter adverse to the interests of the corporation or entity if the matter is substantially related to matters handled by the lawyer when he or she worked "in-house" for the corporation or entity?

Answer: No.

References: KRPC Rules 1.9 and 1.10; Chugach Electric Assoc. v. U. S. District Court, 370 F.2d 441 (9th Cir. 1966); Unified Sewerage v. Jelco, 646 F.2d 1339 (9th Cir. 1981); Ullrich v. Hearst Corp., 809 F.Supp. 229 (S.D.N.Y. 1992).

OPINION

Committee members have received a number of questions along these lines, and the Committee concludes that a formal opinion may be helpful.

A lawyer who works "in-house" for a corporation or other entity represents the entity as a client. Rule 1.13. It follows that the former "in-house" lawyer is bound by the same rules as any other lawyer, and owes the same obligations to his or her former client as any other lawyer would owe. See Rules 1.9 and 1.10. Clearly, the lawyer may not attack his or her own prior work or represent anyone in connection with a matter in which the lawyer participated personally and substantially while working "in-house." Compare Rule 1.11(a). On the disqualification of the lawyer or any firm the lawyer joins see KBA E-354 (1993) (screening not favored by the Committee outside of the context of the former government lawyer or the former judge or arbitrator).

We also note that any time there is substantial doubt about the propriety of representation in light of Rules 1.9 and 1.10 in this context, the prudent lawyer will decline the representation. While the Committee does not decide disqualification motions, which are fact-sensitive and are "for the court" to decide, we refer the reader to the following cases: Chugach Electric Assoc. v. U. S. District Court, 370 F.2d 441 (9th Cir. 1966) and Unified Sewerage v. Jelco, 646 F.2d 1339 (9th Cir. 1981) (dealing with the pro and cons of disqualification because a lawyer's work "in-

house" gave the lawyer special "insights and understandings"); and Ullrich v. Hearst Corp., 809 F.Supp. 229 (S.D.N.Y. 1992) (lawyer who handled employment discrimination cases for a company disqualified from representing a client against the company in such a case.)

Note to Reader

This ethics opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530 (or its predecessor rule). The Rule provides that formal opinions are advisory only.