

RE: Advisory Opinion 97-02
Arkansas Bar Association

DATE: June 30, 1997

SUBJECT: Representation that *is* Adverse to Director of Corporate Client

ISSUE: A law firm represents a corporate client {designated as ABC} which has a multi-person board of directors. One director, who is not an employee or officer of the corporate client, is an officer and employee of a second corporation {designated as XYZ} . The law firm does not represent XYZ, nor any officer, director or employee of XYZ.

The issue raised is whether the firm may represent a third party in a dispute that is adverse to XYZ. ABC will not be a party to the litigation and has no interest in the outcome of the litigation. The firm will not discuss the litigation with representatives of ABC.

ANALYSIS: An attorney who *is* retained to provide legal services for a corporate entity has an attorney-client relationship with the corporation. Ark. R. Prof. Conduct 1.13(a) . That relationship does not automatically extend to individual corporate directors or officers. The Comment to the Rule describes those individuals as "the constituents of the corporate organizational client." In describing the duty of confidentiality, the Comment states "this does not mean, however, that constituents of an organizational client are the clients of the lawyer."

Rule 1.13(e) permits the attorney to represent a director, officer, or employee, provided the provisions of Rule 1.7 are satisfied. However, *in* this situation, the firm has not entered into any relationship with the director as an individual. Therefore the firm has no attorney-client relationship with XYZ, and likewise has no attorney-client relationship with a director of XYZ.

CONCLUSION: The Arkansas Rules of Professional Conduct do not prohibit an attorney from opposing a corporation, even though one of the corporate directors *is* also a director of a client corporation.

NOTICE

"This *is* an opinion only of the Arkansas Bar Association which *is* a voluntary association of attorneys licensed to practice *in* the State of Arkansas, and reliance thereon *is* voluntary and relieves any Association member from liability for the content hereof. This opinion is intended to be the Association's best interpretation of the Model Rules of Professional Conduct as promulgated by the Supreme Court of Arkansas as that code applies to the written facts presented to the Committee."

ARKANSAS BAR ASSOCIATION

By: _____
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Reporter for Professional Ethics
and Grievances Committee