

Can a Lawyer Sue an Ex-Client For Former Foe?

By PAUL DAVIES

DON KING makes a good living off boxers in the ring, and Judd Burstein has done well off Mr. King in the courtroom.

Since 1997, Mr. Burstein, a Manhattan lawyer, has scored a string of legal victories representing fighters in contract disputes against boxing's most famous promoter. In all, Mr. Burstein estimates he has cost Mr. King \$25 million and pocketed \$3 million to \$4 million for himself.

The acrimony between the two has been so intense over the years that Mr. Burstein once referred to the promoter as a "cancer" on boxing. Mr. King described Mr. Burstein as an "insidious insect."

But now, Mr. Burstein finds himself in Mr. King's corner. The pugnacious attorney has switched sides and is representing the fight promoter in a lawsuit against Christopher Byrd, the International Boxing Federation heavy-weight champ, whom Mr. Burstein recently represented in a suit against Mr. King. "It's good to have him on my payroll now," Mr. King says of Mr. Burstein.

There's no rule explicitly prohibiting lawyers from representing someone they once sued. But legal experts say it's rare for an attorney to sue one person on behalf of a client and then sue the former client on behalf of the former adversary. "That is very questionable," says Robert W. Gordon, a professor at Yale Law School. "I would think a judge would be inclined to dismiss that out of hand."

Complicating matters: The previous lawsuit and the current one involve a dispute over the same contract. New York state's legal code says lawyers cannot represent anyone against a former client if the disputes "are substantially related." Most states have similar rules, as does the American Bar Association. The purpose is to prevent lawyers from using confidential information—obtained from former clients—against them in subsequent cases. In New Mexico last year state attorney general Patricia Madrid disqualified Richard Flores, the newly-elected district attorney for the fourth judicial district, from handling a death penalty case because Mr. Flores represented the defendant while in private practice. The state attorney general took over the case.

In filing suit against Mr. Byrd last month in federal court in Manhattan, Mr. Burstein flagged the potential conflict in a letter to U.S. District Judge Michael B. Mukasey. But he contended in the letter that the suit involves "only new disputes, based upon completely different facts that arose months after my firm ceased representing Mr. Byrd."

Mr. Burstein represented Mr. Byrd for a month or so in the suit against Mr. King in 2004. Mr. Byrd alleged that Mr. King didn't live up to a contract that guaranteed the boxer \$2.5 million for each title defense by failing to line up an opponent for an upcoming match.

The new suit involves a subsequent match under the same contract. Mr. King contends that Mr. Byrd has refused to fight Vladimir Klitschko to defend his title and so is in breach of the contract. Mr. Byrd counters that Mr. King has dragged his feet in setting up bouts and so the contract is void. Mr. King is seeking \$4 million in damages. (Mr. King has been a controversial figure over the years but remains one of the sport's top promoters.)

Mr. Burstein says that part of his motivation for suing Mr. Byrd stems from the fighter's refusal to pay him \$250,000 for his work on the initial

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Judd Burstein



Don King

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suit against Mr. King, as Mr. Burstein says was called for in his retainer agreement with Mr. Byrd. The two eventually agreed to a fee of \$150,000. Mr. Burstein says he had limited contact with Mr. Byrd while representing him and didn't gain any information that could be used against the fighter in the current suit.

"It's fair to say [Mr. Byrd] is not happy," about Mr. Burstein representing Mr. King, says Patrick C. English, Mr. Byrd's current attorney. Mr. Byrd declined to comment. Mr. English says he plans to attempt to remove Mr. Burstein as Mr. King's counsel if the suit goes forward. Mr. English has filed a motion to have Mr. Burstein removed from a parallel case in New Jersey, where he is also representing Mr. King in a contract dispute with Mr. Byrd. A hearing for that case, which has a number of defendants, is set for Jan. 30.

Mr. Burstein is blasé about the challenge: "If I get disqualified, I get disqualified."

Mr. King, for his part, is thrilled with his new lawyer. "I'd rather have him for me than against me," Mr. King says. "He's like a pit bull when he sinks his teeth into a case."

The flip-flop is the latest chapter in the colorful career of Mr. Burstein, who used to represent alleged mobsters and once helped developer Donald Trump in a divorce proceeding. Mr. Burstein, 52 years old, estimates that about 30% of his business comes from clients he once sued who have hired him to take on unrelated third parties. The King-versus-Byrd dispute is the first time he has represented a former adversary against a former client.

Mr. King retained Mr. Burstein for unrelated legal matters in September 2004, a month after settling his dispute with Mr. Byrd. Later, when Mr. King asked Mr. Burstein to sue Mr. Byrd, the lawyer initially said he couldn't. But Mr. King persisted, Mr. Burstein recalls, and so he studied the issue and

concluded that he was within the ethical standards to represent Mr. King against Mr. Byrd.

Messrs. King and Burstein have publicly lobbed insults at each other for years. In 1998, Mr. King called Mr. Burstein "an insidious insect" after the lawyer disclosed in a hearing that Mr. King made a \$100,000 donation to an organization affiliated with the Florida Athletic Commission as he was seeking to change a commission rule prohibiting exclusive deals between promoters and fighters.

In 2003, Mr. Burstein described Mr. King as a "cancer" on the sport of boxing after the attorney secured a \$7.5 million settlement from him on behalf of boxer Terry Norris. That same year, Mr. King sued Mr. Burstein for libel in a British court. According to the complaint, Mr. King called Mr. Burstein a "shyster lawyer" in an interview with the New York Daily News. Mr. Burstein responded on a boxing Web site, calling the remarks anti-Semitic. Mr. King sued, claiming damage to his reputation. The case was filed in a British court because United Kingdom libel laws are less strict, making it easier for plaintiffs to win. Since Mr. Burstein's remarks were posted on a Web site, Mr. King claimed he was libeled in the U.K.

The case was settled; the terms are confidential. Mr. Burstein now says he believes Mr. King isn't anti-Semitic.

That wasn't the first time Mr. Burstein's courtroom bravado has gotten him into hot water. In 1999, U.S. District Court Judge Denny Chin accused him of using "Rambo lawyering" in a breach-of-contract dispute between the inventor of the hair scrunchy and her lawyer. Judge Chin fined Mr. Burstein \$50,000 for legal tactics he found "offensive," including a letter Mr. Burstein wrote to the opposing lawyer threatening to subject him to the "legal equivalent of a proctology exam." A federal appeals court later overruled the judge, saying Mr. Burstein's behavior didn't justify the penalty.