

ADVISORY ETHICS OPINION 87-15

SYNOPSIS:

A law firm which employs a paralegal may represent parties adverse to paralegal's spouse in real estate transactions provided full disclosure is made to the client and the paralegal is not allowed to work on those transactions.

FACTS:

A law firm employs a paralegal on an "as needed" basis. The spouse of this paralegal is active, as a principal, in local real estate matters. Anticipating the possibility of being asked to represent clients on the other side of transactions in which the spouse is involved, this firm would like to know if any such representation is appropriate. This firm would not involve the paralegal in any aspect of any of the transactions.

OPINION:

In previous opinions, this committee has considered similar situations involving attorneys who are spouses.¹ In these instances, the Committee has concluded that while potential situations of conflict must ultimately be examined on a case-by-case basis, full disclosure to the clients involved and insulation of the spouse from work on the actual case are ordinarily sufficient safeguards. In husband/wife attorney situations, the Committee has generally concluded that automatic withdrawal is necessary only in certain instances, such as those where the lawyer's professional judgment may be affected by his or her own financial, business, property or personal interests.²

In the circumstances underlying the request, the paralegal's situation is comparable to that of any other principal or employee of a firm whose spouse may be, from time to time, transacting business with clients of the firm. In such cases, as long as the principal or employee is not involved in work on the transaction, the professional judgment of the attorney should not ordinarily be affected, and in most situations, conflict should not arise.

Notwithstanding that automatic disqualification of the firm will ordinarily be unnecessary, the firm should also be mindful that it is "common knowledge that the normal operation of a law office exposes confidential professional information to non-lawyer employees of the office, particularly . . . those having access to the files".³ In light of this fact, the firm should insure that the paralegal is made especially aware of the obligation to preserve the confidences and secrets of the firm's clients. Opinion No. 78-2 outlines the controls which are mandatory in such a situation, including screening from any direct or indirect participation in the matter and prohibition of discussion of the transaction. In addition, because the attorneys in the firm must ". . . strive to avoid not only professional impropriety, but, also the appearance of impropriety",⁴ all parties to the transaction must be informed of the paralegal's employment by the firm and his or her relationship to the adverse principal in the transaction.

SUMMARY:

Because the attorney's professional judgment is not likely to be affected by reason of the paralegal's employment, automatic disqualification is not required. Because it might create the appearance of impropriety to undertake such representation, however, disclosure of the paralegal's employment by the attorney and of his or her relationship to a principal in the transaction is necessary. If the attorney undertakes such representation, after disclosure and with the client's consent, he must take appropriate steps to safeguard client confidences in the transaction.

¹ See Opinion Nos. 79-20 and 77 -6.

² DR 5-101(a).

³ EC 4-2.

⁴ EC 9-6.