

## **ADVISORY ETHICS OPINION 79-22**

### **SYNOPSIS:**

Two or more attorneys sharing law offices who are not, nor hold themselves out to be, partners or affiliates are subject to the same conflict of interest restrictions as attorneys so affiliated.

### **OPINION:**

In supplementation to the original request for an opinion, the following additional facts were submitted. Although neither of the two lawyers have a secretary, they intend to use the services of same one when they eventually do hire one. They share a filing cabinet although client files are maintained in separate drawers. They occasionally discuss cases and strategies without identifying clients by name.

Under this agreement the committee feels that the confidences and secrets of the client are imperiled.

Both the fiduciary relationship existing between lawyer and client and the proper functioning of legal system require the preservation by the lawyer of confidences and secrets of one who has employed or sought to employ him. A client must feel free to discuss whatever he wishes with his lawyer and a lawyer must be equally free to obtain information beyond that volunteered by his client. EC 4-1

Although the committee recognizes that the two attorneys intend to scrupulously guard their client's confidences, this association invites laxity and innocent error.

A secretary who types or files correspondence for attorneys representing conflicting parties can easily misfile critical information or unwittingly reveal it to the wrong lawyer.

Discussions between these attorneys relative to their client's cases can cause problems in a setting where the client's file, correspondence, etc. sits on the secretary's desk or library conference table, fully exposed to view.

Finally, even recognizing the intent of the attorneys to carefully preserve the secrets of their clients, it is the question of how such an arrangement would appear to the lay public. In any case where the two lawyers represent opposing sides, either or both clients may suspect that their confidences are being betrayed or their interests jeopardized. The distinction between a partnership (or professional corporation) and a cost-sharing relationship may be lost or unrecognized by the average layman.

Every lawyer owes a solemn duty to uphold the integrity and honor of his profession; to encourage respect for the law and for the courts and the judges thereof; to observe the Code of Professional Responsibility; to act as a member of a learned profession, one dedicated to public service; to cooperate with his brother lawyers in supporting the organized bar through the devoting of his time, efforts, and financial support as his professional standing and ability reasonably permit; to conduct himself so as to reflect credit on the legal profession and to inspire the confidence, respect, and trust of his client and of the public; and to strive to avoid not only professional impropriety but also the appearance of impropriety. EC 9-6

For the reasons stated above, the committee also believes that representing both buyer and seller in a real estate transaction by two attorneys practicing under the arrangement described above is ethically improper as well.