

# ADVISORY ETHICS OPINION 79-28

## SYNOPSIS:

A law firm cannot represent a wife in a contested divorce and continue such representation after it employed a paralegal who had worked 50 hours on this case in a law office representing her husband.

## FACTS:

Law Office A employs a paralegal who had worked for Law Office B. In her former employment, the paralegal had worked more than 50 billed hours and approximately as many unbilled hours (out of approximately 400 firm hours) for client Mr. D in a “hotly contested divorce” case, which continues, and in which Law Office A represents Mrs. D. The paralegal was privy to all of the confidential information revealed by Mr. D. to Law Office B while she was working there.

## DISCUSSION/CONCLUSIONS:

The Code of Professional Responsibility is directed towards the action of lawyers, not paralegals, and hence the form of the question. For lawyers, the requirements of confidentiality under Canon 4 and of avoiding conflicts under Canon 5 are among the most stringent in the Code.

We do not assume that Law Office B failed to instruct the paralegal in the requirements of confidentiality pursuant to Canon 4. Nor do we assume that Law Office A would permit the paralegal as part of her employment to work on the D divorce case or to betray confidences of her former employer’s clients.

We cannot refute, however, the position that to a member of the public it would appear that Law Office A had purchased confidential information as to facts and strategy, giving its client Mrs. D an unfair advantage over Law Office B’s client Mr. D, when it persuaded the paralegal to change sides.

In making the foregoing statement we are assuming that Law Office A houses the paralegal in the same offices in which the attorneys representing Mrs. D work (not in some other place) and that Law Office A is the small law office typical of Vermont. If these assumptions are correct, there is not way in which the lawyers in Law Office A could have avoided the appearance of impropriety when they employed the paralegal during the pendency of the hotly contested divorce case. By employing the paralegal, they failed to adhere to the ethical considerations of Canon 9, which provide:

Continuation of the American concept that we are to be governed by rules of law requires that the people have faith that justice can be obtained through our legal system. A lawyer should promote public confidence in our system and in the legal profession. . . . When explicit ethical guidance does not exist, a lawyer should determine his conduct by acting in a manner that promotes public confidence in the integrity and efficiency of the legal system and the legal profession. . . . Every lawyer owes a solemn duty to uphold the integrity and honor of his profession; . . . to conduct himself so as to reflect credit on the legal profession and to inspire the confidence, respect, and trust of his clients and of the public; and to strive to avoid not only professional impropriety but also the appearance of impropriety.

Can Law Office A continue to represent Mrs. D? We are unwilling to say on the facts presented that withdrawal by Law Office A is the only or even the most appropriate remedy at this time. It may be. But certainly the facts creating the appearance of impropriety should not be allowed to continue unchanged. While the damage to the profession resulting from the initial ignoring of Canon 9 cannot be undone, there is continuing damage if the situation is not rectified. We would suggest that Law Office A communicate with Law Office B and attempt to work out a satisfactory solution to the problem Law Office A has created.