

ADVISORY ETHICS OPINION 80-15

SYNOPSIS:

Two attorneys occupying adjacent offices and sharing library, conference room, and office equipment, and who are not and do not hold themselves out to be partners or associates, are not subject to the same conflict of interest restrictions as attorneys so affiliated and may properly represent opposite sides of real estate transactions and other causes. On the facts stated, it is not improper for one of the two attorneys to sublet from the other.

QUESTIONS PRESENTED:

Two attorneys wish to engage in an arrangement whereby they will occupy adjacent offices and share a library, conference room, and office equipment. They will not engage in, nor hold themselves out as engaging in, nor hold themselves out as engaging in, the practice of law as partners or associates.

- (a) Are the attorneys subject to the same conflict of interest restrictions as attorneys who are affiliated as partners or associates?
- (b) May the attorneys represent opposite sides of real estate transactions or other causes?
- (c) May one attorney sublet from the other, or must they each have their own independent relationship with landlord?

OPINION:

- (a) No. We are mindful of Opinion 79-22 which, under different factual circumstances, resulted in a different opinion. In 79-22, the attorneys involved shared not only equipment, library and waiting space, as in this case, but they also shared file drawers and one secretary. In addition, they planned to occasionally discuss cases and strategies without identifying the clients. No such plans exist in the case at hand.

“A Lawyer Should Preserve the Confidences and Secrets of a Client. Ethical Considerations. EC 4-1

Both the fiduciary relationship existing between lawyer and client and the proper functioning of the 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 obtain information beyond that volunteered by his client. A lawyer should be fully informed of all the facts of the matter he is handling in order for his client to obtain the full advantage of our legal system. It is for the lawyer in the exercise of his independent professional judgment to separate the relevant and important from the irrelevant and unimportant. The observance of the ethical obligation of a lawyer to hold inviolate the confidences and secrets of his client not only facilitates the full development of facts essential to proper representation of the client but also encourages laymen to seek early legal assistance.”

In both circumstances the attorneys involved intend to carefully guard their clients’ confidences. However, the sharing of files, secretarial coverage and discussion invited error as well as an implication of impropriety. In that situation the practicalities of the sharing would imperil the confidences and secrets of the clients.

The sharing involved under the facts at hand are minimal and create at worst manageable risk. In fact, the situation seems more similar to the common practice of neighboring law offices sharing libraries and conference rooms, as, for example, in some of the State courthouses.

- (b) Yes. Lawyers must “avoid not only professional impropriety but also the appearance of impropriety.” EC 9-6.

“EC 9-6. 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 clients and of the public; and to strive to avoid not only professional impropriety but also the appearance of impropriety.”

However, under the stated facts the only appearance would be through the shared library, conference room and equipment. This sharing is neither the type which is likely to cause confusion nor give rise to the “appearance of impropriety” if the attorneys in fact hold themselves to be unrelated in all other respects. To avoid any misunderstanding, the attorneys should

clearly inform their clients of their separateness, and ensure, after full disclosure, that their respective clients have no objection to such representation.

- (c) No. The subletting would cause harm if the landlord-lawyer could be perceived as having improper influence over the second attorney or vice versa. As long as the rate established for the sublet is within the range of reasonableness, any appearance of impropriety would be extremely remote and, thus, not inconsistent with EC 9-6.