

ADVISORY ETHICS OPINION 95-14

SYNOPSIS:

The individual attorneys in two professional corporations practicing in the same community may enter into a partnership with each other for the sole purpose of owning an office building and converting it into two condominium units, each of which will then be sold to one of the two professional corporations. This is true even though the two professional corporations have occasion to oppose each other on behalf of their respective clients.

FACTS:

Professional corporations A and B maintain law offices in the same town. Both firms concentrate in the practice of family law and they sometimes represent opposing clients in the same matter. The individual attorneys in professional corporation A are also partners in a holding company (the "Partnership") which owns an office building. The attorneys in professional corporation B would like to buy into the Partnership. The Partnership would then convert the building into a two unit condominium. Professional corporations A and B would each purchase a condominium unit from the partnership. The professional corporations would have offices in the same building but would remain separate and distinct.

QUESTION:

The individual attorneys of Professional Corporation B have asked whether the proposed partnership presents any conflict of interest.

ANALYSIS:

The two provisions of the Code which warrant consideration prior to the formation of a business partnership are DR 3-103 and DR 5-104. DR 3-103 provides in pertinent part that a lawyer shall not form a partnership with a non-lawyer if any of the activities of the partnership consist of the practice of law. DR 5-104(A) preclude a lawyer from entering into a transaction with a client if they have differing interests therein and if the client expects the lawyer to exercise his professional judgment therein for the protection of the client, unless the client has consented after full disclosure.

In the absence of any information to the contrary, we have assumed that the only partners in the Partnership will be attorneys from professional corporations A and B and that the sole purpose of the subject building and its conversion to a condominium. As a result, the Partnership is not a partnership with non-lawyers and its activities do not include the practice of law. Similarly, the facts as presented contain no information which would lead us to conclude that any of the attorneys will be exercising his or her professional judgment on behalf of any of the other attorney-partners. Thus, even if the partners have differing interests, there would be no attorney-client relationship to be protected by the provisions of DR 5-104(A).

In effect, we see the Partnership as a short term relationship with a very specific objective. Upon the creation and sale of the two condominium units, the partnership will have achieved that objective. We assume that it will be terminated to eliminate the potential for any future conflict of interest. Thereafter, the only connection between the two professional corporations would be that they are housed in the same building and members of the same condominium association.

Accordingly, we find no conflict of interest in the proposed partnership.