

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OPINION 89-005

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[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]

SYLLABUS: When two individual attorneys share office space the facts and circumstances of their relationship will determine if they can ethically represent opposing sides in a case. Under DR 5-101(A), maintaining such representation will require full disclosure and subsequent consent from the clients. Additionally, protection must be taken to preserve the confidentiality of the attorney-client relationship as set forth in DR 4-101.

OPINION: We have before us your request for an advisory opinion on a possible conflict of interest involving two attorneys who share office space and who represent opposing sides in a contested divorce proceeding. You state in your letter that the attorneys' letterheads are separate, they employ separate secretaries, and, in most respects operate autonomously. The major concern appears to be in regard to the propriety of the attorneys' representation.

Two attorneys in the same law firm would be prohibited from representing opposing sides in a contested divorce proceeding. Code of Professional Responsibility, DR 5-105(D). However, the Code does not explicitly address the office sharing situation. Instead, we must look at the facts and circumstances of each case to determine whether the lawyers are to be considered independent of one another. In this particular case, there appears to be no attempt by the attorneys to hold themselves out to the public as a partnership. This, combined with the fact that the two lawyers' practices are independent, leads us to believe that the imputed disqualification rules should not be applied in this particular situation. Id.

Both lawyers must still meet the requirements of DR 5-101(A). See, ABA Committee on Ethics and Professional Responsibility, Informal Op. 1486 (1982). Disciplinary Rule 5-101(A) states:

[e]xcept with the consent of his client after full disclosure, a lawyer shall not accept employment if the exercise of his professional judgment on behalf of his client will be or reasonably may be affected by his own financial, business, property, or personal interests.

In this case, it would appear that there is at least the possibility of financial or personal interests arising that could affect either attorney's judgment. The client's consent is required as set forth in DR 5-101(A) and also in EC 5-21 which states:

. . . [a] lawyer subjected to outside pressures should make full disclosure of them to his client; and if he or his client believes that the effectiveness of his representation has been or will be impaired thereby, the lawyer should take proper steps to withdraw from representation of his client.

Both lawyers then must make full disclosure of their office arrangement and receive the consent of their clients to continue the representation.

Another important factor to consider is the confidentiality of the attorney-client relationship. As the U.S. Supreme Court has stated, ". . . it is essential that a lawyer work with a certain degree of privacy, free from unnecessary intrusion by opposing parties and their counsel." Hickman v. Taylor, 329 U.S. 495, 510 (1947). Similarly, EC 4-1 states in part:

[t]he 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. See, also, DR 4-101.

Sharing office space with opposing counsel at least raises the possibility that the client's confidences may not be maintained. To insure confidentiality in this situation, all materials relating to this divorce action should be kept stored separately by the individual lawyers in locked file cabinets. In addition, the secretaries of the two lawyers should not share any work relating to the divorce proceeding at issue in this request.

Due to the difficult nature of this type of arrangement, all possible caution should be used by both lawyers to preserve each client's right to privacy and confidentiality. Also, Canon 9 requires lawyers to avoid even the appearance of impropriety. Thus, although not prohibited by the Code, we discourage two lawyers who share office space from representing opposing sides in a contested divorce proceeding.

In conclusion, it is our opinion, and you are so advised, that the Code of Professional Responsibility does not explicitly forbid two lawyers in an office sharing arrangement from representing opposing parties in a contested divorce but does place a burden on the respective attorneys to operate within the guidelines of DR 5-101(A) and DR 4-101. The clients must be made aware of the personal and financial relationship between the two attorneys so that the clients can make an informed decision regarding their representation. Additionally, strict client confidentiality must be maintained, and the privacy of the individual clients respected.

This is an informal, non-binding advisory opinion based upon the facts presented and limited to questions arising under the Code of Professional Responsibility.