

You advise that your secretary is interested in the part-time magistrate position in your area. You currently practice criminal law, both appointed and retained, in the courts where many of the warrants she would write would be heard. You state that you would in no way assist your secretary in her magistrate's duties, such as advising as to the awarding of warrants and setting bond.

You wish to know whether or not any conflict of interest would be created should your secretary become the part-time magistrate in your area.

Disciplinary Rule 7-109(A) states, "A lawyer shall not give or lend anything of value to a judge, official, or employee of any tribunal under circumstances which might give the appearance that the gift or loan is made to influence official action." Disciplinary Rule 7-109(B) states, "In an adversary proceeding, a lawyer shall not communicate, or cause another to communicate, as to the merits of the cause for the judge or an official before whom the proceeding is pending. ..." The Committee advises that should your secretary become the magistrate in your area, you must be cautious not to violate DR:7-109(A) or (B).

The Committee also refers you to DR:3-104(C), which states, "A lawyer or law firm that employs nonlawyer personnel shall exercise a high standard of care to assure compliance by the nonlawyer personnel with the applicable provisions of the Code of Professional Responsibility. ..."

Disciplinary Rule 9-101(C) [DR:9-101] states that "A lawyer shall not state or imply that he is able to influence improperly or upon irrelevant grounds any tribunal, legislative body or public official."

Disciplinary Rule 4-101(E) states, "A lawyer shall exercise reasonable care to prevent his employees, associates, and others whose services are utilized by him from disclosing or using confidences or secrets of a client, except that a lawyer may reveal the information allowed by DR:4-101(C) to an employee." The Committee also advises that should your secretary become a magistrate, you must be cautious not to violate either of the above-cited disciplinary rules.

Committee Opinion
March 29, 1988