

You have asked the Committee for guidance concerning the confidentiality that must be adhered to by a law firm's employees when a real estate legal secretary of that firm who is preparing and covering the necessary responsibilities for processing real estate closings also has a husband who is starting a real estate agency. You indicate this same secretary has her license to sell real estate and plans to register it with her husband's firm. Under these circumstances, you believe that such an arrangement would put the legal secretary in a position to have direct knowledge of information regarding other realtors who are in direct competition with her husband and/or herself.

The Committee believes that the real estate legal secretary's personal interests and dual employment do present ethical problems and cautions that the firm must establish procedures which will comply with the guidance provided below.

The appropriate and controlling disciplinary rule relative to your inquiry is DR:4-101(E) which provides that 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 to the disadvantage of that client or for the advantage of himself or a third person, except that a lawyer may reveal information through an employee as permitted by DR:4-101(C). Ethical Consideration 4-4 [EC:4-4] provides that a lawyer should endeavor to act in a manner which preserves the evidentiary privilege; he should be diligent in avoiding professional discussions in the presence of persons to whom the privilege does not extend. It has been a long established rule that the normal operation of a law office would necessarily expose confidential professional information to non-lawyer employees, in particular, secretaries and those having access to the files. Thus, a lawyer is admonished to exercise care in selecting and training his employees so that the sanctity of all confidences and secrets of his clients may be preserved. (See EC:4-2)

The Committee would direct your attention to LE Op. 366 in which the employment of an investigator or special police officer required the attorney to employ him as an agent of the attorney for the purposes of DR:4-101(B) and (E).

Committee Opinion
July 25, 1989