

DUAL BUSINESS – CONFLICT OF INTERESTS – REAL ESTATE PRACTICE: ATTORNEY/REAL ESTATE AGENT CONDUCTING UNRELATED LEGAL MATTERS FROM REAL ESTATE OFFICE AND ADVISING COLLEAGUES OR EMPLOYER.

You have asked the Committee to opine on the propriety of an attorney conducting a legal practice out of his non-legal business office. You have provided the following facts for the committee's consideration.

You advise that the attorney continues to work for his lay employer, a real estate firm, but is not acting as house counsel nor is he practicing law for the firm in any capacity. The attorney does have some potential non-real estate clients who occasionally seek his legal advice outside of his office at the real estate firm.

You wish to know if the attorney may initiate calls to and receive calls from these clients at his office in the real estate firm, and if it would be improper for the attorney to forward from and receive correspondence and documents at the office.

The Committee directs your attention to LE Op. 754 in which the committee previously opined that where an attorney seeks to share offices with a non-legal corporate client, he is required to (1) post a sign identifying his office at the main entrance; (2) maintain separate and secure files and office space; (3) maintain distinct telephone listings; and (4) properly effect a change in address by notifying clients, courts, bar associations, as well as changing his stationery and business cards to reflect his correct address.

By properly implementing the foregoing procedure, it is the opinion of the Committee that the attorney has complied with the provisions of DR:2-101(A), DR:2-102(A), DR:4-101(A) and DR:5-101(A). Disciplinary Rules 2-101(A) and 2-102(A) provide that a lawyer shall not use or participate in any form of public communication, or professional card, announcement card, office sign, letterhead stationery, telephone directory listing, law list, or similar legal directory listing professional notice if such communication contains any false, fraudulent, misleading or deceptive statement or claim. Disciplinary Rule 4-101(A) provides that neither a “confidence,” information protected by the attorney-client privilege under applicable law nor a “secret,” other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or detrimental to the client, may be revealed by the attorney nor used by the attorney against the client.

Furthermore, Disciplinary Rule 5-101(A) provides that a lawyer may not accept employment if the exercise of his professional judgment on behalf of his client may be affected by his own personal, financial, business or property interests, except with the consent of his client after full and adequate disclosure under the circumstances. Thus, should the attorney wish to offer his non-real estate client his or the real estate firm's services in handling the sale of property, such referral would not be unethical provided the appropriate disclosures are made in advance to the client and the client consents thereto.

Finally, the Committee directs your attention to Canon 3, specifically, DR:3-101(A), DR:3-102(A) and DR:3-103(A) and the proscriptions enumerated in the rules against a lawyer aiding a non-lawyer in the unauthorized practice of law or dividing legal fees with

a non-lawyer, or forming a partnership with a non-lawyer if any of the activities of the partnership consist of the practice of law. (See also LE Op. 316)

The Committee has previously opined that an attorney cannot ethically nor legally undertake representation of a client when the attorney has personal interests which are not compatible with those of the client, unless the client consents after full and adequate disclosure. Such disclosure may include, specifically, any pecuniary remunerations, such as commissions or fees, directly or indirectly received, as a result of the client's employment of the real estate firm. (See LE Op. 187 and LE Op. 1198)

In addition, you have asked if the attorney may give legal advice to his nonlegal associates, for example, advising his employer or co-real estate agent on a matter concerning a contract for a real estate client.

Assuming the real estate client whose contract is in question is not also a client of the attorney on a separate unrelated legal matter, advising the nonlegal employer on legal matters in connection with transacting the firm's business is ethically permissible provided that the attorney's personal interests would not affect the exercise of his independent professional judgment on behalf of the client/non-legal employer, and that the same employer consents to such representation. (See DR:5-101(A) and LE Op. 1027, LE Op. 1254)

If, however, the client whose contract is in question is both a client of the real estate firm and of the attorney/agent, the attorney, in addition to considering whether the exercise of his judgment will be affected by his personal interests in representing the firm, must determine whether he can adequately represent the interests of each client given the type of representation and issues involved. The separate, unrelated multiple representation is ethically permissible if each client consents to the multiple representation after full disclosure of the possible effect of such representation on the exercise of the attorney's independent judgment on behalf of each. (See DR:5-105(C) and (D) and LE Op. 1254)

Committee Opinion  
January 18, 1990