

You have indicated that an attorney and his wife, as co-owners of an office building, have entered into a lease agreement with the Commonwealth's attorney. The attorney maintains his law office on the first floor of the building and the Commonwealth's attorney's office is on the second floor. You further indicate that there is no commingling of files or any other matters, but the attorney and the Commonwealth's attorney share a law library, a common waiting room, and a receptionist who answers the telephone for both offices and directs clients to the appropriate office from the common waiting room.

You have asked the Committee to opine whether, under the facts of the inquiry, it is proper for the attorney to represent clients charged with criminal conduct. For purposes of the opinion, the Committee assumes that the potential clients are charged in the same jurisdiction where the offices are located and where the Commonwealth's attorney/tenant serves as prosecutor.

The appropriate and controlling disciplinary rules relative to your inquiry are DR:4-101, which provides for the preservation of a client's confidences and secrets and DR:9-101(C), which states that, in order to avoid even the appearance of impropriety, "[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."

The Committee has previously opined that it is improper for an attorney to lease office space from a judge if the attorney plans to practice law regularly before that judge. (See LE Op. 368) Similarly, the Committee opined that it is improper for an attorney to serve as a court-appointed lawyer in commitment proceedings before a special justice when the special justice is also the attorney's office landlord. (See LE Op. 791) In addition, LE Op. 677 found that it was improper for attorneys to share office space and secretarial help while representing opposite sides in a divorce action.

In the facts you present, the Committee believes it would be extremely difficult for the attorney to preserve the confidences and secrets of his clients. While it is unlikely that the attorney's criminal defendant clients would think that their interests were somehow being represented by the Commonwealth's attorney (See LE Op. 413), the Committee is concerned that the lease arrangement between the attorney and the Commonwealth's attorney would permit those clients and the public to perceive that the interests of the attorney's criminal defendant clients would be enhanced because of the simultaneous landlord/tenant relationship. See LE Op. 1203; see also Indiana Op. U-4 (undated 1990).

Thus, the Committee is of the opinion that it would be improper for an attorney who leases office space to a Commonwealth's attorney, while also sharing a common waiting room, a receptionist who answers the telephone for both, and a law library, to simultaneously represent criminal defendant clients who are being prosecuted by that Commonwealth's attorney.