

You have presented hypothetical situations in which a federal judge has recently notified an attorney that he must provide authority for his ability to continue representing a party if he were to introduce the office paralegal's testimony as to her investigative functions in the case. Each of the three following hypothetical situations involves a paralegal who acted as an in-office investigator for the case.

1. The attorney's paralegal has interviewed the witness who is on the stand in lieu of an investigator. Since the witness' testimony is inconsistent with the *oral* statement which he made to the paralegal, the attorney wants to call the paralegal to the stand during his case-in-chief, for the sole purpose of impeaching the witness based upon his prior oral interview.

2. The attorney's paralegal has interviewed the witness who is on the stand in lieu of an investigator. Since the witness' testimony is inconsistent with the *written* statement which he signed following the interview by the paralegal, the attorney wants to call the paralegal to the stand during his case-in-chief. The sole testimony which he will elicit from the paralegal involves authentication of the witness' statement, e.g., testimony respecting the witness' signature and the circumstances under which the statement was taken.

3. The attorney wants to call his paralegal as a witness for the following sole purpose: to testify as to the mathematical accuracy of a diagram which she prepared and which is drawn to scale.

You have asked the Committee to opine whether, under the facts of the inquiry, the attorney may continue his representation in the case if he calls his paralegal to testify for the purposes enumerated.

The appropriate and controlling Disciplinary Rules related to your inquiry are DR:5-102(A) which provides that if, after undertaking employment in contemplated or pending litigation, a lawyer learns or it is obvious that *he or a lawyer in his firm* ought to be called as a witness on behalf of his client, he shall withdraw from the conduct of the trial and his firm, if any, shall not continue representation in the trial, except that he may continue the representation and *he or a lawyer in his firm* may testify in the circumstances enumerated in DR:5-101(B)(1), if the testimony will relate solely to an uncontested matter or to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the testimony; DR:5-101(B)(2), if the testimony will relate solely to the nature and value of legal services rendered in the case by the lawyer or his firm to the client; or DR:5-101(B)(3), if refusal would work a substantial hardship on the client because of the distinctive value of the lawyer or his firm as counsel in the particular case. [emphasis added]

Based upon the plain language of the applicable Disciplinary Rules, the Committee is of the opinion that the attorney is not required to withdraw from representing his client/party if he calls as a witness the paralegal employed by him for purposes of witness impeachment, authentication, or determination of mathematical accuracy of a diagram drawn by the paralegal. The Committee is of the view that, since the paralegal is not a lawyer or an advocate in the case, the rules prohibiting a lawyer from serving as counsel in a case where the lawyer or another lawyer in his firm will be called as a witness is inapposite to the circumstances you describe. *See* Ohio State Bar Association LE Op. 87-

7 (7/15/87), ABA/BNA Law. Man. on Prof. Conduct, 901:6827; Maryland State Bar Association LE Op. 84-6 (9/29/83), ABA/BNA Law. Man. on Prof. Conduct, 801:4334.

Committee Opinion
December 14, 1992