

Committee Opinion
September 21, 1989

LEGAL ETHICS OPINION 1278

APPEARANCE OF IMPROPRIETY –
PUBLIC OFFICIAL: ATTORNEY
REPRESENTING A CLIENT BEFORE A
GOVERNMENTAL BODY WHEN HE
SHARES A PROFESSIONAL
RELATIONSHIP WITH A MEMBER OF
THAT BODY.

You have indicated that you are now associated with a law firm as “of counsel” after having retired from a position as corporate counsel during which tenure you engaged in lobbying activities before the Virginia General Assembly on behalf of that company. When you associated with the law firm, you continued to lobby the General Assembly on behalf of various groups in the same industry as your prior corporate employer. A member of the firm with which you are now associated has announced his candidacy for a seat in the Virginia House of Delegates.

In light of previous LE Op. 419 and LE Op. 537, which were rendered prior to the enactment of the detailed General Assembly Conflict of Interest Act, § 2.1-639.30 *et seq.* [Act], you have asked the Committee to readdress three issues: first, is it proper for a member of a law firm to engage in lobbying when a partner or principal of that firm is an elected member of the Virginia General Assembly; second, if not, is it proper for a member of a law firm to continue to lobby on behalf of established lobbying clients when, after the original lobbying activity began, a partner of that member's firm is elected to the legislature; and, third, if it is improper for a member of a firm to lobby the legislature when his partner is a member of that body, would it be improper for a lawyer who associates with a firm in the role of self-employed independent counsel, retained by the firm under a consulting agreement and listed as “of counsel” to lobby where a partner of that firm is a member of the General Assembly.

The appropriate and controlling disciplinary rules applicable to the questions you have raised are DR:8-101(A)(1) which provides that a lawyer who holds public office shall not use his public position to obtain, or attempt to obtain a special advantage in legislative matters for himself or for a client where he knows or it is obvious that such action is not in the public interest, and DR:9-101(C) which provides 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.

The Committee is of the view that the conclusions reached in LE Op. 419 and LE Op. 537 continue to be applicable to the situation you have described, notwithstanding the greater detailed disclosures now required of legislators under the Act. It is the Committee's opinion that the legal requirements of disclosure and abstention imposed on members of Virginia legislative bodies do not override the ethical admonitions of the applicable disciplinary rules. The Committee continues to believe that compliance with the Act by the legislator is a legal, not an ethical, requirement and will not obviate the need for both lawyer-legislators and lawyer-lobbyists to adhere to the ethical obligations of the profession.

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The Committee is of the opinion that the proscriptions precluding an attorney from lobbying the legislature when a member of his firm is an elected member of that body apply equally whether the lawyer-lobbyist is lobbying on behalf of clients whose representation predates the election of the lawyer-legislator or on behalf of clients acquired subsequent to the election involved. The principles articulated in Disciplinary Rules 8-101(A)(1) and 9-101(C) are not mitigated by the relationship's having preceded the election since the potential special advantage to be obtained or improper influence to be exerted is only measurable at the time the appearance is made before the legislative body, i.e., following the election.

Finally, the Committee similarly finds it irrelevant whether the lawyer-lobbyist enjoys a partner, associate, or self-employed independent "of counsel" relationship with the firm of which the lawyer-legislator is a member. The Committee believes that the doctrines of avoiding inferential special advantage or improper influence are equally applicable to all lawyers engaged in a professional relationship with the law firm of an elected legislator.

Therefore, upon careful reconsideration, the Committee reaffirms the prohibitions articulated in LE Op. 419 and LE Op. 537 and opines that, the General Assembly Conflict of Interests Act notwithstanding, it is improper for an attorney to lobby before the General Assembly or other legislative body when a lawyer with whom he shares a professional relationship is an elected member of that body.

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