

Committee Opinion  
June 13, 1990

LEGAL ETHICS OPINION 1353

CORPORATE PRACTICE – CONFLICT  
OF INTEREST – DUAL EMPLOYMENT:  
CORPORATE COUNSEL ALSO OF  
COUNSEL TO CORPORATION'S  
OUTSIDE COUNSEL.

You have advised the Committee that you are employed by a parent company and its subsidiaries ("corporate client") on a regular basis in the capacity of Assistant General Counsel and Assistant Secretary. As such, you provide day-to-day legal advice and counsel, and legal representation before administrative agencies and local courts. In addition, you are responsible for the selection and evaluation of outside counsel. Furthermore, you indicate that you have been offered an opportunity to join a law firm in the capacity of "of counsel," representing outside clients through the law firm and sharing in the revenues of the law firm, while retaining your current position with the knowledge and consent of management of your corporate client. Finally, you indicate that, in your capacity as of counsel to the firm, you will not provide representation to, or bill the corporate client, although the firm may represent the corporate client from time to time while segregating those fees from any in which you share.

You have asked the Committee to opine as to the propriety of an attorney who serves as corporate counsel retaining an outside law firm to represent his corporate client while the attorney has an of counsel affiliation with the firm and where the corporate client has knowledge and consents to the arrangement but the attorney does not share in any revenues generated thereby.

The appropriate and controlling rule relative to the circumstances you describe is DR:5-101(A), which requires that a lawyer not accept employment if the exercise of his independent Professional judgment on behalf of his client may be affected by his own financial, business, property, or personal interests, except with the consent of his client after full and adequate disclosure under the circumstances.

The Committee has earlier opined that it is not improper for a member of the Virginia State Bar to simultaneously be a member of two or more organizations for the practice of law ( LE Op. 802; see also ABA Informal Opinion 83-1499) and further that it is not improper for an attorney who is employed full-time as counsel to a corporation to maintain a separate office for the private practice of law ( LE Op. 328), or to furnish legal services to individual employees of his corporate employer (LE Op. 226).

The Committee is of the opinion that, since the circumstances you describe do not appear to involve any multiplicity of clients, a parity of interests would exist between your position as corporate counsel and your law firm's provision of legal services to the same corporate client. Nevertheless, it is clear that your referral of your corporate client to the outside law firm with which you would be affiliated would constitute a personal interest, regardless of whether or not you would share in any fees generated by services rendered to the corporate client. It is the opinion of the Committee that consent of the

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corporate client after full disclosure would, however, cure any impropriety arising under DR:5-101(A). Furthermore, in order to avoid potential improprieties, the Committee cautions that outside counsel should maintain direct communication and reporting lines with either the corporation's General Counsel or the corporate directors, rather than with a lawyer who enjoys a dual role as corporate Assistant General Counsel and law firm "of counsel."

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