

LEGAL ETHICS OPINION 1502

PUBLIC OFFICIAL — APPEARANCE OF
IMPROPRIETY: LOBBYING AND
SERVING AS PART-TIME
LEGISLATIVE AIDE FOR FIRM
EMPLOYEE WHO IS ATTORNEY AND
DELEGATE TO THE GENERAL
ASSEMBLY.

You have presented a hypothetical situation in which an attorney is the employer of another attorney who is a member of the Virginia General Assembly. The employer has, for several years, actively supported state legislation to improve conditions in the region and the attorney presently wishes both to continue lobbying before assembly committees and to work as a part-time legislative aide to his employee. You indicate that the support of legislation before the Virginia General Assembly would not be in behalf of a particular client and the attorneys' firm would receive no fee or cost reimbursement for the employer's work as part-time legislative aide except for any applicable per diem payment received from the state.

You have asked the Committee to opine whether, under the facts of the inquiry, the employer of an attorney who is a member of the Virginia General Assembly may appear before the assembly's committees and members to (1) lobby for issues in which he has personal convictions (e.g., environment, education) and (2) work as his employee/delegate's part-time legislative aide which requires lobbying for or against issues the delegate assigns to him.

The appropriate and controlling Disciplinary Rules related to your inquiry are DR:8-101(A)(1) which states 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 under circumstances where he knows or it is obvious that such action is not in the public interest; and DR:9-101(C) which mandates 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.

Although the Committee is not empowered to make statutory interpretations, it does take notice of the definitions regarding lobbying and lobbyists under § 30-28.1 of the Code of Virginia and of Opinions of the Attorney General which have addressed those definitions. The Committee is cognizant that the definition limiting the term "lobbying" speaks to activities which include "promoting, advocating or opposing any matter by an individual *for or on behalf of another* but shall *not include appearances before a legislative or legislatively created committee or agency*, or submission of a written statement thereto". § 30-28.1(c) [emphasis added] *See also* 1987-1988 Report of the Attorney General 372 [87-88 Va. AG 372]; 1976-1977 Report of the Attorney General 149 [76-77 Va. AG 149]; 1974-1975 Report of the Attorney General 245 [74-75 Va. AG 245].

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Whether the activities you describe would properly be characterized as “lobbying”, then, requires a factual determination beyond the purview of this Committee. Assuming, however, that the employer/attorney is not determined to be functioning in the capacity of “lobbyist”, and is therefore not seeking to obtain a special advantage in legislative matters for himself or for a client, the Committee is of the opinion that the attorney may continue such activities while his employee is serving as a member of the Virginia General Assembly. *See also* Illinois State Bar Association Committee on Professional Ethics Opinion 91-27 (4/3/92), ABA/BNA Law. Man. on Prof. Conduct, Current Reports (June 3, 1992), pp. 146-47 (attorney should not be prevented from exercising his rights of petition and association as a private individual simply because of his choice of profession); *Cf.* LE Op. 419, LE Op. 537, LE Op. 1278. The Committee cautions, however, that the attorney must exercise diligence in complying with DR:9-101(C) which requires that he not state or imply an ability to influence the General Assembly because of his employee's status as legislator.

With regard to whether or not the attorney may serve as part-time legislative aide to his employee/attorney, the Committee is of the opinion that such employment is not *per se* violative of any provision of the Code of Professional Responsibility since the facts indicate that the attorney's firm will not receive any fee or cost reimbursement other than an applicable per diem from the state. However, the Committee cautions that the attorney must comply with the disclosure and consent requirements of DR:5-101(A), related to any personal interest in such employment as it creates a conflict with his independent professional judgment on behalf of a client. *See, e.g.*, LE Op. 1163, LE Op. 1198, LE Op. 1254, LE Op. 1311, LE Op. 1318.