

CONFIDENCES AND SECRETS –  
APPEARANCE OF IMPROPRIETY:  
LAWYER REPRESENTING CRIMINAL  
DEFENDANTS AND RENTING SPACE  
IN OFFICE BUILDING TO CITY FOR  
USE BY COMMONWEALTH'S  
ATTORNEY.

You have presented a hypothetical situation in which an attorney and his law partner are sole stockholders in a corporation which owns an office building. The attorneys' offices are located on the first floor of the building and the attorneys want to lease to the City the second floor, which has a separate street number and separate entrance. You indicate that the City wants to use this space as an adjunct to the Commonwealth's Attorney's office and house secretarial staff and some Assistant Commonwealth's Attorneys. You further indicate that the sign on the door would say only "City of \_\_\_\_\_" and the space would not be for public access. You state that there would be no sharing of common areas, receptionists, law libraries, etc., between the two offices.

Finally, you state that neither the attorneys' clients nor members of the Commonwealth's Attorney's staff could gain access to the other space from their respective spaces.

You have asked the committee to opine whether, under the facts of the inquiry, there would be a conflict of interest for the attorney and his partner to represent clients charged with criminal offenses. For purposes of this 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 related to your inquiry are DR:4-101, which provides for the preservation of client 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, in LE Op. 1416, that it is improper for an attorney/building owner 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 defendants who are being prosecuted by that Commonwealth's Attorney.

The committee believes that your factual situation is readily distinguishable from that in LE Op. 1416 since the facts presented indicate that the attorneys and Commonwealth's Attorney would share no space, personnel or resources whatsoever. The facts also indicate that the offices would have separate entrances and that there would be no public access to the Commonwealth's Attorney's office. Under those circumstances, then, the committee is of the opinion that the problems of client confidentiality and public

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February 8, 1994

perception of impropriety are not present here. Thus, the committee opines that it would not be a conflict of interest for the attorney and his partner to represent clients charged with criminal offenses under these circumstances.