

Committee Opinion
January 23, 1996

LEGAL ETHICS OPINION 1659

ASSOCIATE OF FIRM MAINTAINING
OWN PRACTICE AT SEPARATE
OFFICE.

You have presented a hypothetical situation in which a law firm wishes to hire an attorney as an associate to make court appearances for the firm within a circumscribed geographical area. The associate attorney will maintain a separate practice and office, but will also handle cases as an employee of the law firm and be shown on the firm's letterhead as an associate. The attorney will be paid as other associates through the general payroll fund.

Under the facts you have presented, you have asked the committee to opine as to the propriety of hiring an associate who also maintains a separate law practice.

The appropriate and controlling disciplinary rules relative to your inquiry are DR:2-101(A) and DR:2-102(B) which require that public communications such as advertising, letterhead, professional notices, etc. not contain statements or claims that are false, fraudulent, deceptive or misleading; DR:4-101 requiring protection of confidences and secrets; and DR:5-105 addressing multiple clients with conflicting interests.

The committee has previously opined that there is no prohibition against an attorney having dual separate law practices. See LE Op. 226 and LE Op. 328 (in house counsel to corporation or insurance company may maintain separate office for private practice); LE Op. 802 (attorney licensed in Virginia may simultaneously be a member of two or more organizations for the practice of law.

In LE Op. 1293 the committee opined that it is ethically permissible for an attorney to be employed as an associate by two or more law firms or professional corporations. The committee warned, however, that the associate and employer/law firm must be mindful of their obligations to avoid the possibility of misleading anyone as to the activities engaged in at both firms; and they must avoid any activity or relationship which would create a conflict of interest. In addition to avoiding the representation of clients with conflicting interests, the associate must adhere to the requirements of Canon 4 for safeguarding confidences and secrets of the clients of each law firm.

The committee has previously opined, under similar facts, that a firm may have as an associate an attorney who shares office space in the same building as the firm, but maintains a separate practice as well. See LE Op. 1532.

In the facts you present, the committee believes it is ethically permissible for the associate's name to be listed as such on the law firm's letterhead or other public communications, assuming that it is an accurate statement of that lawyer's status or relationship with the law firm. DR:2-101(A) and DR:2-102(A); LE Op. 1293, *supra*. However, the law firm's stationery should disclose the address of the associate's

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office, to avoid the possibility of misleading the public regarding the associate's relationship with the law firm. DR:2-102(A).

The committee cautions that the arrangement described in your hypothetical cannot be used to avoid the provisions in DR:2-105(D) concerning fee splitting.