

ETHICS OPINION

#119

An attorney has requested the Ethics Committee to render an opinion as to whether or not he may ethically represent criminal defendants under the following circumstances: The attorney is a sole practitioner; however he shares common reception space and secretarial service with another law firm. He reimburses the law firm for the salary and other costs of the secretary. He shares the copy machine, library, and other office facilities. He maintains his files separately from the law firm's files and has his own telephone number and telephone line.

The law firm with which the attorney is sharing personnel space and facilities has a contract with the County Prosecuting Attorney to prosecute criminal actions. None of these criminal files, however, are maintained at the law firm's office, but are kept at the Prosecuting Attorney's office.

The sign in front of the building in which the lawyer and the law firm are housed clearly shows that the attorney's practice is separate from that of the firm.

Rule 1.10 (a) IRPC is applicable to this question:

"While lawyers are associated in a firm none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rule 1.7, 1.8 (c), 1.9 or 2.2."

Rule 1.7 forbids a lawyer from representing a client if the representation of that client would be directly adverse to another client or if the representation of that client may be materially limited by the lawyer's responsibility to another client.

Thus if under the factual situation the attorney is construed to be a member of the firm with which he is sharing space, facilities, etc., he would have an apparent conflict of interest and could not represent defendants in criminal cases.

The comment to Rule 1.10, while not adopted by the Supreme Court of Idaho, casts some light on the question of what constitutes a firm:

"For purposes of the Rule of Professional Conduct, the term "firm" includes lawyers in a private firm, and lawyers employed in the legal department of a corporation or other organization, or in a legal services organization. Whether two or more lawyers constitute a firm with this definition can depend on the specific facts. For example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way suggesting that they are a firm or conduct themselves as a firm, they should be regarded as a firm for purposes of the Rules. The terms or any formal agreement between

firm, as is the fact that they have mutual access to confidential information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the rule that is involved. A group of lawyers could be regarded as a firm for purposes of the rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the rule that information acquired by one lawyer is attributed to another."

The issue of whether lawyers sharing office space or other facilities are practicing as a firm turns on the specific facts of each case. As the amount of sharing, whether of space or facilities, increases, so does the likelihood that the lawyers will be deemed to be practicing as a firm.

Based on the foregoing criteria and on the specific facts given, it is the opinion of the committee that the attorney is not associated with the firm and therefore not prohibited from handling criminal defense cases. The fact that he shares office space and facilities with firm--members of which occasionally do criminal prosecution work for the State--would not preclude him from performing criminal defense work in the same county, so long as care is taken to insure that confidential information is not made available to members of the firm. This result applies whether or not the other firm is prosecuting the same case that the lawyer is defending.

The attorney in this case would be well advised to keep in mind the provisions of Rule 1.6 IRPC regarding confidentiality of information and Rule 5.3 IRPC regarding his responsibilities with respect to the secretary. Steps should be made to insure that the files and other information of his clients are not available to members of the firm and that the secretary is warned of this necessity.

DATED November 14, 1987.

JEFFREY STROTHER
Committee Chairman

FRANK HICKS
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