

SHARING OF OFFICE SPACE

The Idaho State Bar Committee on Ethics and Professional Responsibility continues to receive inquiries and requests for an opinion concerning problems involved with the change by a lawyer from one firm or association situation to another and the effect of such movement on cases pending between the two offices. The latest request illustrates a typical situation:

Attorney "A," the attorney requesting the opinion, was an associate in the office of attorney "B." Attorney "A" now wishes to share office space with attorney "C" as a sole practitioner in the same community. Attorney "B" and attorney "C" have cases pending in which they represent opposing parties. Attorney "A" wishes to know if he is in violation of any of the disciplinary rules by sharing office space with attorney "C."

The mere sharing of office space under the above-stated factual situation is in and of itself and standing alone not violative of any disciplinary rule of the Idaho Code of Professional Responsibility. However, involvement with attorney "C," in the representation of the latter's clients or disclosure of confidences acquired while with attorney "B" could subject attorney "A" to disciplinary action for violation of Disciplinary Rules 4 and 5 of the Idaho Code of Professional Responsibility.

Disciplinary Rule 4-101 deals with "Preservation of Confidences and Secrets of a Client."

B.3. of the Rule states:

"B. Except as permitted by DR 4-101 C, a lawyer shall not knowingly: . . .

"3. Use a confidence or secret of his client for the advantage of himself or of a third person, unless the client consents after full disclosure."

Disciplinary Rule 5-105 is also pertinent:

"DR 5-105 REFUSING TO ACCEPT OR CONTINUE EMPLOYMENT IF THE INTERESTS OF ANOTHER CLIENT MAY IMPAIR THE INDEPENDENT PROFESSIONAL JUDGMENT OF THE LAWYER.

"A. A lawyer shall decline proffered employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment, or if it would be likely to involve him in representing differing interests, except to the extent permitted under DR 5-105 C."

"D. If a lawyer is required to decline employment or to withdraw from employment under DR 5-105, no partner or associate of his or his firm may accept or continue such employment."

Canon 9 provides: "A Lawyer Should Avoid Even the Appearance of Professional Impropriety."

The subject of representation of conflicting interests in this area has been the subject of much litigation. Annotation: "Propriety and effect of attorney representing interest adverse to that of former client," 52 A.L.R.2d 1243. In re Clark, 96 Idaho 889, 539 P.2d 242, the Idaho Supreme Court stated:

"A lawyer who undertakes representation of one whose interests are adverse to those of a former client is guilty of violating DR 5-105(A) unless he obtains the requisite approval pursuant to DR 5-105(C). 7 AmJur2d, Attorneys at Law, paragraph 34; Annot., 52 A.L.R.2d 1243 (1957) supplementing 51 A.L.R. 1307 (1927). In order for such interests to be generally adverse there must, of course, be a connection between the matters with respect to which attorneys services are rendered, and it is clear that there is such a connection here."

The case law on the subject has developed along two lines of philosophy. One line of cases, developed primarily by the federal courts, seeks a factual determination of the extent and involvement of the attorney with the prior representation and if sufficient evidence is produced to rebut the inference or presumption of conflict arising from the former association, the attorney is not disqualified from the subsequent representation. Silver Chrysler Plymouth, Inc. v. Chrysler Motor Corp., 518 F.2d 751; Gas-A-Tron of Arizona of the Union Oil Co. of California, 534 F.2d 1322; American Roller Company v. Budinger, 513 F.2d 982.

The other rule places emphasis on the appearance of impropriety under Canon 9. The attorney must avoid not only the fact but also the appearance of representing conflicting interests. Edelman v. Levy, 42 A.D.2d 758, 1346 N.Y.S.2d 347; Kurbitz v. Kurbitz, 468 P.2d 673 (Wn. 1970); Alpha Investment Company v. City of Tacoma, 536 P.2d 674 (Wn. 1975); Bicas v. Superior Court in and for Pima County, 567 P.2d 1198 (Ariz. 1977).

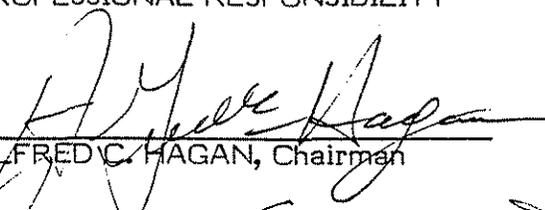
Reverting to the factual situation involved with the request for this opinion, the committee is of the opinion the appearance of impropriety tests should not be applied in this situation. Since attorney "A" is merely sharing office space with attorney "C," the factual situation does not fall within the proscription of DR 5-105(D).

Accordingly, any conflict of interest or allegations of disclosure of confidences gained by prior association or representation would be on an individual, factual, case-by-case basis. The office arrangement between attorney "A" and attorney "C," in and of itself, ought not to subject either to disciplinary action.

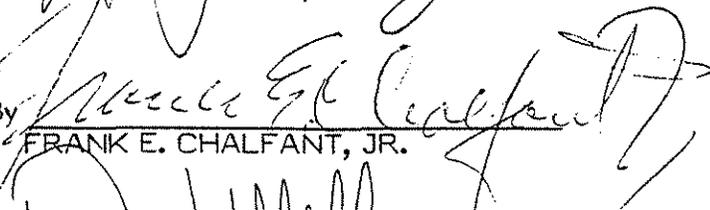
DATED This 2 day of August, 1982.

COMMITTEE ON ETHICS AND
PROFESSIONAL RESPONSIBILITY

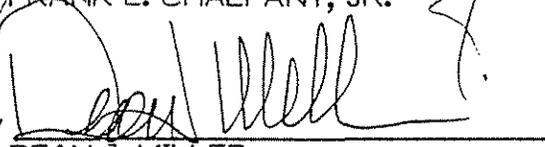
By


ALFRED C. HAGAN, Chairman

By


FRANK E. CHALFANT, JR.

By


DEAN J. MILLER