

NEW HAMPSHIRE BAR ASSOCIATION

Office Sharing: Use of Shared Space By Part Time County Attorney

Ethics Committee Formal Opinion #1982-3/3
9/22/82

Reviewed by Board of Governors 10/15/82

QUESTION: May a part-time county attorney maintain an office for a civil practice in a suite shared by three other attorneys where the three other attorneys represent criminal defendants on an on-going basis? (Note: In addition to the facts contained in the letter of inquiry to the Committee, the inquiring attorney has also informed the Committee that the full-time secretary in the office answers the phone for all of the attorneys when the part-time secretary is unavailable, and vice versa).

RESPONSE: The Committee believes that it would be improper for the county attorney to conduct his civil practice in a suite of offices where other attorneys are engaged in criminal defense work for two reasons. First, the suggested arrangement raises a possibility of breaches of confidentiality. Canon 4 of the New Hampshire Code of Professional Responsibility states that "A lawyer should preserve the confidences and secrets of Clients." The issue of the maintenance of confidentiality is particularly crucial where an attorney is representing a criminal defendant. Even with the most scrupulous efforts to preserve client confidentiality, the proposed office sharing arrangement could expose criminal defendants to the release of confidential information. The presence of the county attorney in the same office also could have a chilling effect on the defendant's disclosure of confidential information, which in turn would seemingly violate the spirit of Canon 4,

....A client must feel free to discuss whatever he wishes with his lawyer and a lawyer must be equally free to obtain information beyond that volunteered by his client. A lawyer should be fully informed of all the facts of the matter he is handling in order for his client to obtain the full advantage of our legal system. EC 4-1, ABA Model Code of Professional Responsibility (1980).

Also of concern is that under the present arrangement, the secretary employed by the inquiring attorney on occasion answers the phones and takes phone messages for other attorneys in the office. A question might arise as to whether the attorney-client evidentiary privilege would extend to an employee working for both defense counsel and the prosecution. DR 4-101 (A). An attorney must "...exercise reasonable care to prevent his employees, associates and others whose services are utilized by him from disclosing or using confidences or secrets of a client..." DR 4-101 (D).

Although the inquiring attorney intends to maintain only his civil practice in the suite, it is still likely that he will on occasion discuss pending criminal cases while at the office shared with the defense attorneys. He may even meet with witnesses or police personnel who may be gathering evidence to present to the grand jury. Certainly there is a risk to the county attorney that confidential information obtained during the course of an investigation, as well

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as during the pendency of a trial, may be unintentionally revealed to others in the office.

Finally, Canon 9 states that "(a) lawyer should avoid even the appearance of professional impropriety." DR 9-101 (c) prohibits an attorney from stating or implying that "he is able to influence improperly or upon irrelevant grounds any tribunal, legislative body or public official." (emphasis added). The close proximity of the offices in this case may suggest to the public that the defense attorneys in the office are in a position to influence the conduct of the county attorney, or that all of the attorneys are associated in a professional manner. For all of the foregoing reasons, the Committee recommends that the inquiring attorney move his civil practice to an office where confidentially and the appearance of impropriety will not present a problem.