

Nebraska Ethics Advisory Opinion for Lawyers  
No. 89-2

[Opinion No. 75-13](#) Modified.

LAWYERS WHO MAINTAIN SEPARATE AND INDEPENDENT PRACTICES BUT SHARE CERTAIN OFFICE FACILITIES, INCLUDING RECEPTION AREA, CONFERENCE ROOMS, LIBRARY, COMPUTER SYSTEMS, AND RECEPTIONIST AND SECRETARIAL PERSONNEL, MAY REPRESENT ADVERSE PARTIES SO LONG AS THE FOLLOWING PRECAUTIONS ARE MET:

1. THERE SHALL BE NO COMMON ACCESS TO THE CASE FILES;
2. THERE SHALL BE NO COMMON ACCESS TO ANY COMPUTERIZED DATA RELATING TO THE CASE;
3. NO SECRETARY SHALL BE ALLOWED TO WORK ON THE CASE FOR BOTH PARTIES;
4. ALL COMMON EMPLOYEES SHALL BE INFORMED OF THE ADVERSE REPRESENTATION AND THE EXTREME SENSITIVITY TO THE MAINTENANCE OF CONFIDENTIALITY; AND
5. EACH CLIENT SHALL GIVE HIS/HER CONSENT TO THE ADVERSE REPRESENTATION AFTER FULL DISCLOSURE OF ALL FACTS RELATING TO THE COMMON PRACTICE AREA.

FACTS

An attorney proposes to develop an area where individual attorneys may have private offices and at the same time share certain costs. The proposal provides that the receptionist, secretaries, library, computer system, and conference rooms would be shared by the attorneys. Each attorney would have his/her own stationery, professional card and telephone line. The computer system would be designed, as nearly as possible, to insure that each attorney would have access

only to his/her own material. There would be no indication of affiliation among the lawyers occupying the premises other than the fact of physical proximity and sharing of certain personnel and facilities.

#### QUESTION PRESENTED

Under the circumstances as stated above, may an attorney in the office represent a client with interests adverse to those of a client represented by another attorney in the same office?

#### DISCUSSION

[Opinion 75-13](#) states that the sharing of offices by lawyers precludes one of those who so shares with another from accepting a case which the other cannot ethically accept. To a considerable degree, that opinion relied upon informal opinions previously published by the American Bar Association's Standing Committee on Professional Ethics.

Since the publication of [Opinion 75-13](#), the question has been considered by the appropriate committees on many state bar associations. The written opinions range from being flatly prohibitive to generally permissive.

The discussions generally relate to two Canons. Canon 4 requires the preservation of confidences and secrets of clients. Canon 9 requires the avoidance of even the appearance of professional impropriety.

A sampling of the various state opinions follows:

Alabama - The adverse representation is permitted where the two lawyers share a secretarial pool, a conference room, a library, and other common areas of the building, provided that the lawyers do not have access to each other's files in matters in which they represent opposing interests.

Illinois - Adverse representation is permitted where the lawyers share office space and secretarial help. Such representation is permitted so long as each lawyer

discloses the potential and conflicting situation to the clients, and obtains the client's consent, and each lawyer can represent his client with undivided allegiance. The lawyers, however, may not share a common secretary in the representation of clients with adverse interests. Such practice creates the potential for disclosure of confidential information and the appearance of impropriety.

Indiana - Lawyers who share office space, telephone systems, reception area, and a library in the same building may represent adverse parties in the same case if there is no access between the telephone systems of the separate practices, the reception area is arranged such that one lawyer's secretary is not able to overhear confidences from another lawyer's clients, case materials are not left in the copier area or library, and clients are informed of the space sharing arrangement and the measures undertaken to avoid any compromise of confidentiality.

Iowa - An attorney who practices criminal law may not share an office with two part-time county attorneys. The public may believe that the criminal attorney holds special influence over the office of the prosecuting attorney. Further, the arrangement creates an opportunity to imply that the prosecutors have access to the lawyer's files and to information concerning the lawyer's clients.

Kentucky - A lawyer who shares offices with the county attorney may not accept employment adverse to the county nor defend criminal cases in any other county. Since the county attorney may not defend cases in any other county or federal court, neither may a partner, associate or person who shares office space with the county attorney practice criminal law in those jurisdictions. The appearance of impropriety is too great.

Maine - A lawyer who maintains a separate law practice but shares office space, equipment, and personnel with another lawyer may not represent a client in an action against a client of the other lawyer.

The mutual sharing arrangement may Jeopardize both client's confidences.

Michigan - Lawyers who share office space may represent clients with potential conflicting interests provided certain protective measures are taken. The lawyers must establish office procedures that will assure that client's confidences and secrets are maintained. For example, the responsible lawyer may store client files in a locked desk or in his home so as not to risk accidental compromise should either lawyer chance upon them in the general office area. Each lawyer must fully explain the relationship to his clients, indicate that there will be no compromise of confidences, and obtain the consent of the client to continue representation.

Missouri - Lawyers may share an office and represent opposing parties so long as they hold themselves out as maintaining separate practices and no confidential information is passed between them. However, sharing a common secretary could pose problems.

New Hampshire - A county attorney may not conduct his civil law practice from an office shared with criminal defense lawyers. The possibility of breaches of confidentiality has a chilling effect on a defendant's disclosure of confidential information and creates the appearance of impropriety as the close proximity of the offices may suggest to the public that the defense attorneys are in a position to influence the conduct of the county attorney.

New York City - Law firms may not represent opposing parties where the two firms share a suite of offices, and where the two firms have close working relationship (i.e. the two firms act as co-counsel in some cases, refer cases to each other, share a telephone system, and the secretaries of both law firms cover for one another). There is a strong likelihood that confidences and secrets of the firms' respective clients cannot be maintained. The relationship between office sharing lawyers places an undue burden upon each attorney to maintain the client's confidences and

secrets.

North Carolina - Lawyers who share office space may represent conflicting interests if the confidentiality of each lawyer's practice is maintained in both appearance and fact. The lawyers may share a common library and copying equipment, for example, but not a common telephone number or lay personnel.

Vermont - Two attorneys may occupy adjacent offices and share a library, conference room and office equipment, and yet represent clients with conflicting interests. In such an arrangement, the attorneys are not subject to the same conflict of interest restrictions as attorneys who are affiliated as partners. However, sharing of files, secretarial coverage and discussion would invite an implication of impropriety. To avoid misunderstandings, the attorneys should inform their clients of the separateness of attorneys.

Virginia - Two attorneys sharing office space and a secretary must withdraw from the representation of clients that are adverse, unless consent of clients is obtained after full disclosure. Clients who are infants are not capable of providing the informed consent necessary to rectify a conflict of interest.

In addition to the foregoing, the American Bar Association's Standing Committee on Ethics and Professional Responsibility issued Informal Opinion 1486 on February 8, 1982. This opinion is as follows:

The committee is asked whether a lawyer may rent space from a law firm where the lawyer and the law firm represent adverse interests in pending lawsuits and contemplate referrals to each other in the future. The lawyer will not be associated with the law firm in any way except that the lawyer will rent an office from the law firm and will share with the law firm a reception area, secretarial space and library facilities. The lawyer will use separate stationery and will not be listed on the law firm stationery.

The lettering on the door will indicate the existence of two separate law practices.

In the opinion of the committee, if the lawyer complies in good faith with the requirements of DR 4-101 and DR 5-101 (A), the lawyer and the law firm may make the arrangement described above. DR 4 1-1 requires that the lawyer exercise reasonable care to prevent the lawyer's employees and associates, as well as others whose services are utilized by the lawyer, from disclosing or using confidences or secrets of a client. The lawyer and the law firm should be particularly sensitive to this requirement and establish office procedures that will assure that confidence or secrets are maintained. The lawyer and the law firm also should explain fully the relationship to, and obtain the consent of, their clients to continue to represent adverse interests in the pending lawsuits and to represent adverse interests in future matters.

After carefully considering each of the foregoing opinions and the rationales thereof, as well as the economic realities of today's solo practice, we are persuaded that [Opinion No. 75-13](#) should be modified.

We now hold that lawyers who maintain separate and independent practices but share certain office facilities, including reception area, conference rooms, library, computer systems and receptionist and secretarial personnel, may represent adverse parties so long as the following precautions are met:

1. There shall be no common access to the case files;
2. There shall be no common access to any computerized data relating to the case;
3. No secretary shall be allowed to

work on the case for both parties;

4. All common employees shall be informed of the adverse representation and the extreme sensitivity to the maintenance of confidentiality; and

5. Each client shall give his/her consent to the adverse representation after full disclosure of all facts relating to the common practice area.

It must be stressed that while these rules may not always be easy to apply and enforce, they are extremely important to avoid the appearance of impropriety.

#### CONCLUSION

Lawyers who maintain separate and independent practices but share certain office facilities, including reception area, conference rooms, library, computer systems, and receptionist and secretarial personnel, may represent adverse parties so long as the following precautions are met:

1. There shall be no common access to the case files;

2. There shall be no common access to any computerized data relating to the case;

3. No secretary shall be allowed to work on the case for both parties;

4. All common employees shall be informed of the adverse representation and the extreme sensitivity to the maintenance of confidentiality; and

5. Each client shall give his/her consent to the adverse representation after full disclosure of all facts relating to the common practice area.

Nebraska Ethics Advisory Opinion for Lawyers  
No. 89-2