

INDIANA STATE BAR ASSOCIATION
LEGAL ETHICS COMMITTEE

OPINION NO. 1 OF 1984

Attorney A and spouse own an office building in a metropolitan area. Attorney A's firm has an office in said building and handles some criminal defense work.

Attorneys B and C have contacted the aforesaid building owners to lease unoccupied office space, which has totally separate facilities, entrance, waiting room, and does not connect with Attorney A's law firm office.

The aforesaid building owners propose to consult an independent real estate broker to establish a proper rental and, thereafter, to employ said broker to manage space, collect the rents, and handle possible complaints.

Our committee was requested to advise whether such lease arrangement would prohibit Attorney A's practice in criminal and divorce law.

In our Unpublished Opinion No. U3 of 1979, this committee was faced with a fact situation somewhat similar to the instant case. In U3, the tenants had been partners, until such time as one of the partners became a prosecutor and the other partner terminated the relationship and desired to do criminal defense work. The only remaining connection between those attorneys is that they maintained offices in the same building connected by a common lobby. The rule applicable to this type of case is adequately summarized by said Opinion U3 as follows viz:

". . . In Formal Opinion No. 2 of 1979, this Committee, relying on established American Bar Association Formal Opinions, indicated that it would not be proper for a lawyer who occupied the same suite of offices as a Prosecuting Attorney to appear on the other side of the case against the Prosecutor with whom he was sharing the office expense.

"Thereafter, in Formal Opinion No. 3 of 1973, this Committee restated the rule that it would not be proper for any Attorney to represent a client in any proceeding opposing a Deputy Prosecuting Attorney with whom he shares offices. The Opinion noted the possibility that there could be a sharing of offices with a Deputy Prosecutor which would not prohibit this practice of criminal law by every Attorney who shares office space with a Deputy Prosecuting Attorney provided that the public would not be misled, and setting out five (5) minimum tests which would have to be applied. Most recently in Unpublished Opinion No. U1 of 1979, it was indicated that a Deputy Prosecutor sharing office space with a law firm under circumstances described therein disqualified that law firm from taking cases

Further, our Opinion No. 2 of 1982 concludes that a Prosecuting Attorney and Defense Attorney are not prohibited from engaging in a mutual business pursuit; notwithstanding the fact that care should be exercised so as not to violate DR 5-101. Part of the rationale for that decision, is that the Model Code of the American Bar Association has no provision which precludes an attorney from engaging in a second profession or business at the same time and indeed, the Indiana Code of Judicial Conduct at Canon 5 indicates that even a Judge may hold and manage investments, including real estate and engage in other remunerative activity including operation of a business.

This committee concludes upon the basis of the facts submitted, there does not appear to be any conflict of interest in the leasing arrangement which would preclude the lawyers in question from taking adverse positions in the same case or prohibiting Attorney A's firm from practicing in criminal, divorce, eminent domain, and other related areas of the law.

