



Committee on Professional Ethics

Opinion #422 - 11/6/75 (86-75) Topic: Secretary; employment

Digest: Attorney having adversarial matters with law firm may properly employ secretary leaving that firm if precaution is taken to prevent disclosure of confidential information.

Code: Canon 9
EC 4-1, 4-6
DR 4-101(D)

QUESTION

May an attorney employ a secretary who has just left another law firm with which firm the attorney has adversarial matters pending?

OPINION

No problem exists if the secretary does not possess any confidential information regarding the pending adversarial matters and thus it is not improper for the attorney to employ the secretary. However, should the secretary have any confidential or secret information relating to the adversarial matters a more difficult question is presented.

A paramount obligation of lawyers is to keep inviolate the confidences and secrets of their clients. EC 4-1 provides that not only the fiduciary relationship between lawyer and client, but also "the proper functioning of the legal system require[s] the preservation by the lawyer of confidences and secrets". DR 4-101(D) obliges a lawyer to "exercise reasonable care to prevent his employees" from divulging confidential information. Since the obligation to preserve confidences continues after termination of the lawyer's employment (EC 4-6), a correlative duty devolves upon the hiring attorney not to create a situation which may lead to the secretary, even innocently, divulging confidential information of clients of the law firm, the previous employer. Cf. ABA Inf. 692 (1964) holding that a law firm which engages in criminal practice may not ethically employ as a secretary in a confidential capacity the wife of a police officer if by so doing the police might possibly obtain confidential information not otherwise available to them. N.Y. State 386 (1975) states that "to avoid the possible appearance of impropriety in contravention of Canon 9, it is impermissible to allow a situation to exist where the leaking of confidential information may be foreseeable. Cf. ABA Inf. 692 (1964). It "is improper for a lawyer to employ a part-time secretary if he knows she will continue her employment at another law firm with which he has periodic adversarial matters". N.Y. State 386 (1975).

Accordingly, the attorney may employ the terminating secretary who

has confidential information as to pending adversarial matters, provided he cautions the secretary not to divulge any confidential information and will not permit the secretary to do so.
