

Nebraska Ethics Advisory Opinion for Lawyers  
No. 73-14

PROVIDED THAT ALL ETHICAL CONSIDERATIONS AND DISCIPLINARY RULES ARE MET AND COMPLIED WITH BY THE COMPETING LAW FIRM, IT IS NOT NECESSARILY UNETHICAL FOR IT, WITHOUT SOLICITATION ON ITS PART, TO EMPLOY A FORMER SECRETARY OF ANOTHER LAW FIRM WHO VOLUNTARILY SEEKS EMPLOYMENT WITH SUCH COMPETING LAW FIRM.

AUTHORITIES APPLICABLE

Canon I A lawyer should assist in maintaining the integrity and competence of the legal profession.

EC 101 Maintaining the integrity and improving the competence of the bar to meet the highest standards is the ethical responsibility of every lawyer.

DR 4-101(D) A lawyer shall 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 \*\*\*\*.

State -vs- Richards An attorney should not only avoid impropriety but should avoid the appearance of impropriety.

Canon 9 A lawyer should avoid the appearance of impropriety.

THE QUESTION

Is it proper for a legal secretary, who has terminated her employment in a law firm to be subsequently employed by a competing law firm?

THE PROBLEM

This involves a community of about 2400 people with three law firms. A legal secretary leaves Law Firm "A"

and wishes to be hired by Law Firm "B". It would be inconvenient, perhaps impossible, for her to seek employment elsewhere, because of her responsibilities at home. The reason for her leaving "A" is not shown nor why she seeks employment with "B", except that she probably needs employment. Although only a few adversary matters involve these two law firms, the bone of contention seems to be that confidential information acquired by her, when employed at "A" might either directly or indirectly, intentionally or unintentionally, improperly militate to the advantage of "B". If "B" is not ethically permitted to hire her, could she claim actionable discrimination against her unemployment? Certainly, not being inextricably bound by the Code of Professional Responsibility, she should be entitled to seek employment wherever she desires, unhampered by possible unethical considerations applying to the employer. Also, some secretaries know little or nothing of the confidential matters discussed with their employers; others may know considerable. However, clients of "A" are entitled to be protected from release of information to "B". How can this dilemma be resolved?

## DISCUSSION

In the Preliminary Statement to The Code of Professional Responsibility, it is stated:

"Obviously, the Canons, Ethical Considerations and Disciplinary Rules cannot apply to non-lawyers; however, they do define the type of ethical conduct that the public has a right to expect not only of lawyers but also of their non-professional employees and associates in all matters pertaining to professional employment. A lawyer should ultimately be responsible for the conduct of his employees and associates in the course of the professional representation of the client."

In State ex rel. Nebraska State Bar Ass'n. -vs- Richards, 165 Neb. 80, 93, 84 N.W. (2nd) 136, 145 (1957), our Court stated that "An attorney should not only avoid

impropriety but should avoid the appearance of impropriety." This, of course, is the essence of Canon 9 of The Code of Professional Responsibility.

Disciplinary Rule 4-101 (D) states that "A lawyer shall 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, except that a lawyer may reveal the information allowed by DR-101(C) through an employee."

Canon I states that "A lawyer should assist in maintaining integrity and competence of the legal profession" and EC 1-1 states in part, "Maintaining the integrity and improving the competence of the bar to meet the highest standards is the ethical responsibility of every lawyer."

In other words, EVERY lawyer - and this means the lawyers in both Law Firm "A" AND in Law Firm "B", must maintain the integrity of the bar, avoid the appearance of impropriety, and make certain that all lawyers preserve the confidences of their clients. While this was formerly the primary responsibility of the lawyers in "A", the lawyers in "B" are not relieved of that responsibility. The latter have an obligation also to make certain that this ethical responsibility of "A" is upheld and not violated. Hence, the lawyers in "B" are under a duty to instruct the new secretary and impress upon her the obligation to preserve all confidences, acquired at "A", and for her to take all reasonable precautions against releasing any such information to "B", as well as to advise her of the possibility of actions based on civil liability resulting from improper disclosure of such confidential information.

The effect of the foregoing would be to place an ethical responsibility on "B", if and when they undertake to hire the secretary of a competing law firm. The lawyers in "B" cannot absolve themselves of this obligation to make certain that nothing whatever will be done to have the confidences of the clients of another lawyer violated.

As a practical matter, we have found lawyers leaving

one law firm and going to other firms and this transfer of employment does not seem to pose any particular problem, the only difference being that in their case, the ethical responsibility must be born by them, as lawyers, whereas, where lay employees are involved, that obligation and responsibility shift to the new employer or employers, who then must lean back-ward to make certain that none of the confidences of the clients of the prior lawyer have been violated. Hence, subject to the foregoing, it is not necessarily unethical for a competing law firm to hire a former secretary of another law firm, where the secretary is not solicited from her previous employment but voluntarily seeks subsequent employment in a competing law firm.

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