



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
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INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR DISTRICT COUNSEL
DISTRICT COUNSEL, SOUTH FLORIDA CC:SER:SFL:MIA

FROM: Richard G. Goldman
Special Counsel (Tax Practice & Procedure)
Field Service Division CC:DOM:FS:PROC

SUBJECT: Request for Chief Counsel Advice
Ethics-Effects of Leasing Office Space Upon Representation

This Field Service Advice responds to your memorandum dated December 20, 1999. Field Service Advice is not binding on Examination or Appeals and is not a final case determination. This document is not to be cited as precedent.

LEGEND

A=
B=
C=

ISSUES

1. Whether there is a real or potential conflict of interest on the part of A by virtue of A's association with B?
2. Whether and when we need to notify B that B may be called as a witness in the case?
3. Whether there is an ethical problem in giving B notice that B may be called to testify without providing any further information concerning the substance of that testimony?

CONCLUSIONS

1. On the facts presented, A's relationship with B would not result in a conflict of interest requiring A's removal from the court case.
2. At some point, Counsel will have to either serve B a subpoena or seek B's voluntary presence if B is expected to testify at trial. However, there is no specific time period for when this must be done.
3. There is no ethical problem in giving B notice that B may be called to testify without providing any further information concerning the substance of that testimony.

FACTS

A is neither an associate nor a partner in B's law firm. A is not listed on this law firm's letterhead. A is not listed in Martindale-Hubbell as being part of B's firm, rather Martindale-Hubbell lists A as having his own firm. A is temporarily leasing office space from B so that A shares the same address and phone number as B's law firm. It is our understanding that A will be leaving B's premises shortly and will no longer be a lessee of B. A signed the petition in this Court case on behalf of C becoming the attorney of record. Under the signature block in the petition, A listed the name, address and phone number of B's law firm. A advised that this was done only as an accommodation for C and that it was always intended that another lawyer completely independent from A and B would handle this case. This new lawyer has now made an appearance in the case on behalf of C. A is under the impression that this new lawyer is now handling all matters with respect to the case. A was not aware that a motion to withdraw was needed for him to be removed of record in the case. Apparently, A now intends to file a motion to withdraw. B was actively involved in the examination of this case. B may be called as a witness in this case. B is not an attorney of record in the Court case.

LAW AND ANALYSIS

Whether A has a conflict of interest under Tax Court Rule 24(g) due to fact that B may be called as a witness turns on the relationship between A and B. Under the rules of imputed disqualification, lawyers associated in a firm with B would be disqualified from representing C in Court if B was disqualified for a conflict of interest. See Model Rules of Professional Conduct 1.7, 1.10(a) and 3.7. Persons who share office space and occasionally consult with one another are not regarded as constituting a single firm for conflict purposes. United States v. Varca, 896 F.2d 900, 902 (5th Cir.), cert. denied, 498 U.S. 878 (1990); see also, Comment 1 to Model Rule of Professional Conduct 1.10 (lawyers who share office space and occasionally consult or assist each other ordinarily are not regarded as constituting a firm). On the facts presented here, A's relationship to B would not result in a

conflict of interest requiring A's removal. It should also be noted that A's withdrawal will render as moot the question raised by the relationship between A and B.

The issues concerning the timing of notice and the substance of testimony should B be called as a witness do not raise any unique ethical considerations, rather these issues are a matter of trial strategy. Obviously, at some point Counsel will have to either serve B a subpoena or seek B's voluntary presence if B is expected to testify at trial. However, there is no specific time period for when this must be done. There is no ethical problem in giving B notice that B may be called to testify without providing any further information concerning the substance of that testimony. However, the substance of B's testimony if Counsel intends to call B as a witness will be disclosed in Counsel's Trial Memorandum to the Court.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

None.

If you have any further questions, please call the branch telephone number.