"It is not improper for a lawyer who is admitted to practice as a proctor in admiralty to use that designation on his letterhead or shingle, or for a lawyer who has complied with the statutory requirements of admission to practice before the Patent Office to use the designation 'Patent Attorney' or 'Trademark Attorney' or 'Trademark Lawyer' or any combination of these terms."

While Canon 27, as adopted in New York State, omits the above quoted paragraph, it is nevertheless our opinion that it is not improper for a lawyer who practices in one of the recognized specialities of admiralty, patents, or trademarks, to so indicate on his letterhead.

Question #1 is, therefore, answered in the affirmative as to the designation "Registered U.S. Patent Attorney". However, the use of the words "Patent, Trademark and Copyright Causes Domestic & Foreign", is not a proper designation of recognized specialities and is, therefore, in violation of Canon 27 of the New York State Bar Association.

With respect to Question #2, we find no ethical impropriety in dating letters as suggested, but we feel that it is not in good taste.

Opinion #22 - 5/28/62 (1-66)

Modified (by implication) by #206

Overruled (in part) by 494

Topic: Lawyer-Accountant Relationship.

Digest: Lawyer-accountant relationship must be such as to avoid unauthorized practice of law by a lay agency, division of fees for legal services with non-lawyers, or lawyer holding himself out as engaged in dual practice.

Canons: Former Canons 27, 33, 34, 35, 47

The Committee on Professional Ethics of the New York State Bar Association approves A.B.A. Ethics Opinions No. 297 and 305 taken together. The complete text of both opinions is set forth below.

LAWYER-ACCOUNTANT RELATIONSHIP - OPINION NO. 297 of ABA ETHICS COMMITTEE (February 24, 1961)

The Committee is asked to express its opinion on the following questions:

1. When a lawyer becomes a regular employee of a firm of public accountants on a salaried basis, what work can he do in the course of this employment without violating Canons 47 and 35?

2. When a public accountant is a regular employee of a firm of lawyers on a salaried basis and his employment is for the purpose of doing accounting work for the law firm, will the firm of lawyers be engaged in unethical conduct because of such employment?

3. Under what circumstances, if any, is it ethical for a lawyer to form a partnership with a public accountant?

4. Under what circumstances, if any, is it ethical for a lawyer who is also a public accountant to render both legal and accounting services?

This committee has rendered formal opinions in the past regarding lawyer-accountant relationships (See Opinions 239, 269 and 272). Various informal opinions have also been written from time to time. All previous formal and informal opinions are superseded by this opinion insofar as they deal with the matters covered herein.

QUESTION 1. When a person becomes a lawyer he takes on a mantle that he cannot thereafter take on or off as he pleases. Conduct in which he engages which involves the practice of law when engaged in by lawyers must be in accordance with the ethical standards of the profession if he is to retain his professional status. Even though a particular activity may be open to a layman, if such activity is the practice of law when engaged in by a lawyer, one who is a lawyer cannot free himself of the ethical restraints of the profession in carrying on such activity merely by announcing he is to be regarded as a layman for this particular purpose.

Canon 47 provides as follows:

"No lawyer shall permit his professional services, or his name, to be used in aid of, or to make possible, the unauthorized practice of law by any lay agency, personal or corporate."

This Canon clearly prohibits any lawyer employed by a firm of public accountants from aiding or making possible the practice of law by such firm. Whether particular conduct by the firm which the lawyer is aiding or making possible is the unauthorized practice of the law is a matter for the determination of the Standing Committee on the Unauthorized Practice of the Law.

It is proper for the lawyer-employee to give legal advice to his lay employer on legal matters personal to the employer. If, however, the legal advice given to the employer is to enable the employer to perform services for the employer's client, then such advice may be aiding or making possible the practice of law by the employer and, if so, the lawyer will have violated Canon 47.

The fact that a firm of accountants may be able to perform a particular service to its clients unaided by any advice from a lawyer without being engaged in the unauthorized practice of law does not necessarily protect the lawyer-employee from a violation of Canon 47 if he aids in the performance of such service. When the advice of an employer to enable the latter to render a service to a client, whether the lawyer-employee is aiding or making possible the practice of law by the employer is to be judged, not on the basis of the nature of the conduct of the employer when he proceeds unaided by a lawyer, but rather on the basis of whether the advice given by the lawyer-employee would involve the practice of law if given by him directly to the client.

Canon 35 provides in part as follows:

"The professional services of a lawyer should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and lawyer. A lawyer's responsibilities and qualifications are individual. He should avoid all relations which direct the performance of his duties by or in the interest of such intermediary. A lawyer's relation to his client should be personal, and the responsibility should be direct to the client."

When a lawyer-employee advises his lay employer in regard to a matter pertaining to the affairs of a client of the employer and the giving of such advice by the lawyer-employee directly to the client would involve him in the practice of law, the lawyer is proceeding in violation of Canon 35 when he uses his employer as an intermediary.

QUESTION 2. The employment by a firm of lawyers of a public accountant on a salaried basis for the purpose of doing accounting work for the law firm in its practice of the law does not in and of itself result in the law firm being engaged in unethical conduct.

Canon 34 provides as follows:

"No division of fees for legal services is proper, except with another lawyer, based upon a division of services or responsibility."

Canon 34 is not violated if the accountant-employee is paid a regular salary computed without regard to fees collected for legal services rendered to particular clients.

Obviously, this opinion has nothing to do with whether the accountant-employee is acting properly in the light of any governing restraints which may be applicable to him as an accountant.

QUESTION 3. Canon 33 provides in part as follows: Partnerships between lawyers and members of other professions or nonprofessional persons should not be formed or permitted where any part of the partnership's employment consists of the practice of law."

The partnership's employment does consist of the practice of law within the meaning of Canon 33 if the partnership furnishes services which if rendered by one holding himself out as a lawyer would be deemed the practice of law.

It would also be a clear violation of Canon 34 (quoted above) for a lawyer-partner to divide fees for legal services with an accountant-partner.

If the lawyer-accountant partnership's employment does not consist of the practice of law, within the meaning of that term as used in Canon 33, but the lawyer is also a partner in a distinct and separate firm in which all partners are lawyers and which separate firm is practicing law, the lawyer is not violating Canons 33 and 34 by his membership in the lawyer-accountant firm. In such a case, however, it would seem inevitable that the lawyer is holding himself out as qualified to do accounting so far as the lawyer-accountant firm is concerned and is holding himself out as also qualified to practice

law as a result of his membership in the legal firm. It is a violation of Canon 27 for a lawyer to hold himself out as qualified to practice both law and accounting. This point is also made in the answer to Question 4. The fact that the holding out is at two separate places is not significant. The Canon 27 because it constitutes self-touting, and because the lawyer-accountant firm would almost inevitably serve as a feeder to the legal firm.

QUESTION 4. The person who is qualified as both a lawyer and an accountant must choose between holding himself out as a lawyer and holding himself out as an accountant. As stated in the answer to Question 3, dual holding out is self-touting and a violation of Canon 27.

If he elects to hold himself out as an accountant, he must not practice law or he will violate Canon 27 in that he will be using his activity as an accountant to feed his law practice. In determining whether he is practicing law when he holds himself out only as an accountant, the controlling factor is whether the activity in question is one which would constitute the practice of law when engaged in by one holding himself out as a lawyer.

If he elects to hold himself out as a lawyer, he will not violate any Canon of Ethics merely because in rendition of legal services he utilizes and applies accounting principles. It is not, of course, within the jurisdiction of this Committee to determine whether in any instance he is acting contrary to the governing restraints applicable to him as an accountant.

ABA ETHICS COMMITTEE FORMAL OPINION 305
(March 22, 1962)

Lawyer-Accountant Relationship. Although a person qualified as both a lawyer and an accountant must choose between holding himself out as a lawyer and holding himself out as an accountant, the mere fact that a person qualified and holding himself out as an accountant has also been licensed to practice law should not in itself bar him from engaging in all the activities that an accountant may lawfully engage in.

Canons 35, 47

Opinions 225, 239, 297

The committee has received some inquiries regarding Formal Opinion 297. In that opinion it is said that a person who is qualified as both a lawyer and an accountant must choose between holding himself out as a lawyer and holding himself out as an accountant; and that one who is a lawyer cannot free himself of the ethical restraints of the profession in carrying on an activity which constitutes the practice of law merely by announcing that he is to be regarded as a layman for this particular purpose. However, the mere fact that he has been licensed to practice law should not by

itself bar him from engaging in all the activities that an accountant may lawfully engage in. Obviously Opinion 297 is not applicable (1) where there is an integrated bar in the state where the lawyer-accountant resides but in which he does not maintain his membership by current payment of dues; and (2) where the lawyer-accountant, though licensed to practice in one state, is living in another state where he is not licensed to practice. The same situation should maintain where he has been licensed to practice law in the state where he resides, if he actually does not practice law, has no law office, does not represent himself to anyone as engaged in the practice of the law and does not by his acts leave the inference that he is engaged in the practice of law or prepared to engage in it. The Committee has taken this view of the matter, even though it may be somewhat in the nature of dictum, in Opinion No. 225, where it is said:

> "If a lawyer is to participate in such activities he must withdraw from the practice of law and refrain from holding himself out as a lawyer."

The right of a licensed attorney to "withdraw from the active practice of the law and refrain from holding himself out as a lawyer is also referred to in Opinion 239.

The Committee has held that one who is licensed to practice law, not engaged in the practice of law, but who is practicing as an accountant, may properly belong to the American Bar Association since membership is open to all those who are "licensed to practice law" anywhere in the United States. Such membership, therefore, does not constitute a holding out that the person is practicing law. Membership in state and local associations could be in a different category, since membership in such associations where the lawyer-accountant resided might give rise to an inference that he is holding himself out as a lawyer in the state or locality.

Furthermore, in stating broadly in the opinion that "the controlling factor is whether the activity in question is one which would constitute the practice of law when engaged in by one holding himself out as a lawyer," it was not intended to preclude certified public accountants who are also lawyers but are holding themselves out only as accountants from engaging in activities permitted under the Statement of Principles heretofore approved by the American Bar Association, the National Conference of Lawyers and Certified Public Accountants and the Council of the American Institute of Accountants.