



## Committee on Professional Ethics

Opinion #406 - 8/20/75 (61-75)

Topic: Lawyer as private investigator

Digest: A lawyer may engage in the dual practice of law and another occupation as a private investigator subject to the restrictions provided by the Code.

Code: Canon 2  
DR 2-102(E)

### QUESTION

May a lawyer engaged in the defense of criminal cases obtain a license as a private investigator for the purpose of employing others to conduct investigations under his supervision for use in the course of the lawyer's criminal law practice?

### OPINION

There is no prohibition in the Code against a practicing lawyer engaging in another occupation provided he does not use such occupation, directly or indirectly, to promote his employment as a lawyer. The relevant provision is DR 2-102(E).

"A lawyer who is engaged both in the practice of law and another profession or business shall not so indicate on his letterhead, office sign, or professional card, nor shall he identify himself as a lawyer in any publication in connection with his other profession or business."

The rationale underlying this rule is aptly set forth in the following excerpt from N.Y. State 206 (1971):

"The fundamental principle behind these limitations is to protect the public and the profession against improper solicitation, advertising or commercialization, and to keep the other occupation from being used as a cloak for improper solicitation or from being deliberately used as a direct or indirect feeder of legal work."

Numerous opinions have been issued over the years by various bar associations reflecting a consistent adherence to the basic principle underlying DR 2-102(E). For instance N.Y. County 594 (1971) held that it would not be improper for a lawyer to join with a layman in organizing a corporation which would render services as a traffic consultant "provided he exercises great care in separating the business of the corporation from his legal practice, and conducts the corporation's affairs at all times in such manner as not

to relate them to him as a lawyer". Similarly, N.Y. City 883 (1974) ruled that it was proper for a lawyer to engage in real estate brokerage business "so long as he avoids permitting his brokerage business to become a feeder of clients for his law practice". See also N.Y. State 26 (1965); N.Y. State 135 (1970); ABA 328 (1971).

N.Y. State 206 (1971) provides a comprehensive review of the basic guidelines concerning the propriety of the dual practice of law and another occupation. Such opinion, particularly, notes that the danger of unethical conduct on the part of a lawyer engaged in such dual practice depends, essentially, on the nature of his other occupation. In this connection the following observations were made:

"Unrelated Occupations: Where the other occupation is one entirely unrelated to the practice of law, the danger of improper or unprofessional conduct is considerably less than where such occupation is so closely intertwined with legal matters that it is difficult to distinguish the lawyer's conduct in his other occupation from his conduct as a lawyer."

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"Related Occupations: Where the other occupation is that of accountant, collection agency, claims adjuster, labor relations consultant, business consultant, insurance agent, marriage counselor, real estate broker, income tax service, loan or mortgage broker or any other business where the lawyer participant's activity would be likely to involve frequent solution of problems that are essentially legal in nature, the risk of having the other occupation used improperly as a feeder for legal practice is very great. To avoid this every precaution should be taken to separate the other profession or business from the legal practice."

Therefore, an attorney who proposes to engage, simultaneously, in the practice of law and the unquestionably related occupation of private investigator would be required to observe the implicit as well as the explicit restrictions provided by DR 2-102(E) as noted above. However, it should be observed that since the attorney intends to limit the use of the license as a private investigator to investigations that may be required in the course of his own criminal law practice, there appears to be very little danger, if any, of improper conduct as an attorney. In other words, where an attorney has no intention to engage in the occupation of conducting investigations for others, such limited use of the license would hardly expose the lawyer to the dangers normally incident to the dual practice of law and the occupation as private investigator.

This opinion is limited to the ethical considerations where the services are for the attorney's own use and are not made available to others.

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