



Committee on Professional Ethics

Opinion #536 - 6/30/81 (13-81)

Topic: Dual practice; financial planning corporation

Digest: Members of law firm may conduct their practice and operate financial planning corporation from same office, but may not solicit employment in violation of any statute or court rule.

Code: DR 2-103(A), 2-104(A)

QUESTION

May the members of a law firm conduct a financial planning corporation from the same office in which they practice law and accept clients of the financial planning corporation as clients of the firm?

OPINION

Prior to the landmark decision in Bates v. State Bar of Arizona, 433 U.S. 350 (1977), the Code of Professional Responsibility included DR 2-102(E), since deleted from the Code, which prohibited lawyers engaged in "another profession or business" from identifying themselves in their dual capacity on business cards, stationery or office signs.

Notwithstanding that prohibition, in N.Y. State 206 (1971), this Committee issued comprehensive guidelines for the dual practice of law and related occupations. In that opinion, we drew a distinction between related occupations in which advertising was permitted and other professions whose rules of ethics prohibited advertising. If the second occupation was one in which advertising was permitted, we said that the lawyer should not accept as a client a person whose initial contact with him was as a client or customer of the other occupation, unless the lawyer-client relationship developed entirely on the initiative of the client, without any instigation on the part of the lawyer and, further provided, the client's need for legal services was not integrally related to the goods or services furnished by the lawyer in his other occupation. However, if the other occupation was in one of the professions, such as accounting or architecture, where advertising was

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generally forbidden, it would be proper for the other occupation and the lawyer's practice to be conducted from the same office, and the lawyer could properly accept as clients persons who sought his legal services because they were also his clients in his other occupation.

After Bates and the consequent liberalization of lawyer advertising, the reason for distinguishing between dual practice with occupations which permitted advertising and dual practice with occupations which did not, became irrelevant.

Thus, in N.Y. State 493 (1978), we held that a lawyer may conduct his practice and a real estate brokerage business from the same office; and, in so holding, we expressly overruled five prior opinions to the extent that they determined otherwise. We cautioned, however, that a lawyer continues to be barred from soliciting employment in violation of any statute or court rule and that a lawyer who has given unsolicited advice to an individual to obtain counsel or take legal action cannot accept employment resulting from that advice, in violation of any statute or court rule. See, DR 2-103(A) and DR 2-104(A); see also, N.Y. State 494 (1978).

We now hold that it would be proper for the members of a law firm to establish a financial planning corporation in which they would be the shareholders and employees. Consistent with the principles expressed in N.Y. State 493, supra, the financial planning corporation and the lawyers' practice may be conducted from the same office provided (1) the financial planning corporation is not used for solicitation of law business in violation of any statute or court rule; and (2) the financial planning corporation does not offer any products (e.g., securities, real estate or insurance) for which it would receive a commission or other form of compensation. Of course, care should be taken to avoid possible conflicts of interest; and, in no event, may a lawyer act as legal counsel and broker in the same transaction. N.Y. State 516 (1980).

If there has been no violation of the statutes or rules against solicitation, it is permissible for the law firm to accept as its clients persons who were first introduced to the lawyers through their financial planning activities. Cf., Matter of Koffler, 51 N.Y. 2d 140 (1980) and Judiciary Law §479.

For the reasons stated, the question posed is answered in the affirmative.
