

Nebraska Ethics Advisory Opinion for Lawyers
No. 73-6

ALTHOUGH A LAWYER MAY BE PAID FOR SPECIALIZED LEGAL SERVICES RENDERED IN BEHALF OF A PLANNER OF REAL ESTATE, HE, HOWEVER, MAY NOT DIVIDE HIS FEE IN ANY MANNER WHATSOEVER WITH THE PLANNER, NOR CAN HE BECOME A MEMBER OF A PARTNERSHIP OR CORPORATION WITH HIM, NOR ASSIST IN THE PROMOTION OF SAID PROJECTS OF THE PLANNER, NOR PERFORM LEGAL SERVICES FOR HIM IN A STATE TO WHICH HE HAS NOT BEEN ADMITTED TO THE PRACTICE OF LAW.

DISCIPLINARY RULES CITED

DR 3-101 (A) A lawyer shall not aid a non-lawyer in the unauthorized practice of law.

DR 3-101 (B) A lawyer shall not practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction.

DR 3-103 (A) A lawyer shall not form a partnership with a non-lawyer if any of the activities of the partnership consist of the practice of law.

DR 1-102 (A) A lawyer shall not violate a Disciplinary Rule or circumvent a Disciplinary Rule through actions of another.

DR 2-103 (E) A lawyer shall not accept employment when he knows or it is obvious that the person who seeks his services does so as a result of conduct prohibited under these disciplinary rules.

FACTUAL SITUATION

John Doe expected to graduate from the College of Law, University of Nebraska, last month. He also has an undergraduate degree in architecture. A planner has requested him to write zoning and subdivision

regulations for the former's firm. Doe will open his own law office. The planner would obtain a contract from a county or municipality to prepare a comprehensive plan. The firm then would contract with Doe to prepare the zoning and subdivision regulations, on a case by case basis. Payment would be made either on the basis of the work done or on a monthly basis. It is assumed that Doe is not a licensed architect but that he is, or will become, a duly licensed practicing attorney.

QUESTIONS PRESENTED

- (1) Would this type of arrangement be ethically permissible?
- (2) If so, would it be ethically permissible if the firm would require services of Doe in States where he is not admitted to the practice of law?
- (3) Would it be ethically permissible in this situation for Doe to become a member of a partnership, general or limited, or of a corporation with this planner as a co-owner?
- (4) Would it be ethically permissible for Doe to do promotion work in connection with any of these projects?
- (5) Would any of the foregoing actions violate any Canon other than Canon 3?

DISCUSSION

If properly conducted, this arrangement could be ethically permissible. So long as the planner, himself, entered into contracts with public agencies and he then contracted with Doe for legal services to write the zoning and subdivision regulations for the firm and these two activities were kept separate, especially as to payments, nothing improper need result from such activity. This would be analogous to a real estate broker contracting to sell property and requesting an attorney to prepare the contract and other instruments required in order to consummate the transaction. The real estate

broker charges a fee of his client and he then pays the attorney for legal services rendered. This would not constitute the sharing of legal fees in contravention of Canon 3. However, if that broker and attorney agreed to split the fee in some manner, two violations would result: (1) Improper sharing of legal fees with a layman; and (2) Direct or indirect solicitation of legal work.

Doe states that he has an undergraduate degree in architecture. If he were licensed as such, he could not utilize that profession as a "feeder" to his law business, since this would represent, at least, indirect solicitation of legal work. Again, analogously, if one were a lawyer and a real estate broker, he could not permit the two offices and activities to be carried on in conjunction with each other. Thus, if the planner sought his services because he was a licensed architect AND a licensed attorney, and the two activities were combined as a means of obtaining employment by the lawyer from the planner, Doe would ethically be in difficulty. (See Informal Opinions No. 571 (a) and (b) & No. 775 & No. C-803 & No. 896).

Except in the most unusual situation, Doe, who would not be admitted to the practice of law in a foreign state, should not be permitted to prepare zoning and subdivision regulations in that state. This is considered legal work. It involves the preparation, not only of regulations, but in most cases, of ordinances, legal notices, resolutions, advice on legal procedure involved, and other matters which only a lawyer would, or should, handle for the planner. Some extraordinary situation could be visualized, as, for instance, a municipality, a part of which may extend across a state line. Some leniency in such a situation is conceivable, but, generally speaking, Doe should not perform this type of work in a state where he is not admitted to the practice of law, simply because it consists of services which are essentially legal in character, unless he becomes associated with a licensed attorney in that jurisdiction. (See Opinion 316, issued in 1967).

Doe should not be permitted to enter into a partnership with this firm carrying on this activity or as a member of

the corporation, so involved. This clearly would be a case of fee splitting with the members of the partnership or with the stockholders and officers of the corporation. It certainly would involve his law practice in another business and would be considered an indirect means of soliciting law business.

And, a fortiori, Doe should not be permitted to do promotion work in connection with these projects. Again, this would be analogous to a lawyer, who is also a licensed real estate broker, selling the real estate and then, doing all of the legal work in connection with the transaction. This kind of combination of activity has been consistently condemned as violative of ethical principles.

Of course, there is nothing wrong with one having several businesses or professions, so long as one keeps them separate. Henry S. Drinker, in his *Legal Ethics*, pages 221, 222, and approved in Informal Opinion No. 775, issued February 15, 1965, stated, in part: "Where, however, the second occupation, although theoretically and professedly distinct, is one closely related to the practice of law, and one which normally involves the solution of what are essentially legal problems, it is inevitable that, in conducting it, the lawyer will be confronted with situations where, if not technically, at least in substance, he will violate the spirit of the Canons, particularly that precluding advertising and solicitation. The likelihood of this is the greatest when the collateral business is one which, when engaged by a lawyer, constitutes the practice of law, and when it is conducted from his law office. Thus, there is apparently no doubt as to the impropriety of conducting, from the same office, a supposedly distinct and independent business of collection agent, stock broker, estate planning, insurance adjusters bureau, tax consultant, or mortgage service, or to organize and operate under a trade name, even though in an adjacent office, a corporation conducting servicing business - drafting charters and other corporate papers ***". Also, Opinion No. 31, issued March 2, 1931, stated, in effect, that a lawyer should not under any circumstances, as employee or otherwise, engage in the "corporation

service" business because his legal skills necessarily would have to be applied and because the solicitation by him or his employer of work which, at least, when the lawyer did it, constituted the practice of law". Opinions 234 and 272, however, have set, as a basic criteria, a more liberal view from whether the business or activity would be such as to "readily lend itself", or "can be used" as a feeder to law practice to the test of whether business or other activity "will inevitably serve" as a feeder to a law practice. From the nature of the activity, described by Doe, the formation of a business enterprise and the promotion thereof would "inevitably serve" as a feeder to his desired type of law practice.

Doe should be reminded of disciplinary rules in other Canons, such as DR 1-102 which prohibits a lawyer from violating a disciplinary rule or circumventing a disciplinary rule through actions of another and DR 2-103 (E) which states that a lawyer shall not accept employment when he knows or it is obvious that the person who seeks his services does so as a result of conduct prohibited under these disciplinary rules.

CONCLUSIONS REACHED

Answers to the questions presented are as follows, viz:

- (1) Permissible within prescribed limitations.
- (2) Prohibited, except in rare and unusual situations.
- (3) Prohibited.
- (4) Prohibited.
- (5) Canons DR 1-102 and DR 2-103 (E).