

Nebraska Ethics Advisory Opinion for Lawyers
No. 77-6

UPON THE FACTS PRESENTED, IT IS NOT PERMISSIBLE FOR A LAWYER TO ALLOW HIS CLIENT TO COMMUNICATE TO PRESENT OR POTENTIAL CUSTOMERS OF THE CLIENT THE FACT THAT THE LAWYER HAS BEEN RETAINED BY HIM.

FACTS

You have posed the question: "Is it permissible for a lawyer to allow his clients to communicate the fact that he has been retained by them to their present or potential customers?" to this Committee. You have explained that a man who has been doing income tax work has quit the business and turned such business over to a younger man. It is this younger man who wishes to announce by letter the fact that you have been retained by him to assist him in the preparation of tax returns and "to deal with such problems as may come up."

DISCUSSION

We are primarily concerned about the fact that the income tax man would be advertising that your counseling as an attorney was going to be utilized in the work product and whether or not such would constitute the unauthorized practice of law.

Although the preparation of tax returns is not generally considered "the practice of law", but from a layman's viewpoint, it is closely related to the work performed by a lawyer. Our Court in the case of *State v. Barlow*, 131 Neb. 294, 268 N.W. 95 (1936) held that the "practice of law" includes not only trial of causes in Court and preparation of pleadings to be filed in Court, but also includes drawing and advising as to legal effect of petitions for probate of wills, drawing wills, deeds, mortgages, and other instruments of like character, where legal knowledge is required and where counsel

and advice are given with respect to validity and legal effects of such instruments. The Court also stated in such case, "We do not desire to be understood as saying the mere act of drawing a promissory note, chattel mortgage, real estate mortgage, deed or other similar instruments, would constitute the practice of law, where the person so drawing them acts merely as amanuensis and does not advise or counsel as to the legal effect and validity of such instruments."

It appears that you will be called upon, if this arrangement is made, to advise and counsel with the income tax preparer with reference to legal effects and possible validity of the acts performed. It would therefore appear to us that you would be called upon to render legal advice to your client and your client would then be passing on the legal advice that you render by filling out the income tax returns and advising his clients of the ramifications of the manner in which the return has been made.

Perhaps the actual preparation of the tax returns would not constitute practicing law, but your request indicates that you would be called upon to "deal with such problems as may come up as well". Under normal circumstances, a lawyer, when he fills out an income tax return, is called upon for other counseling as well. If such a letter is sent out to the customers of the tax preparer, it would open the avenue for such request of the preparer for the additional counseling.

Canon Three of the Code of Professional Responsibility of the Nebraska State Bar Association provides that a lawyer should assist in preventing the unauthorized practice of law. EC 3-9 pertaining thereto provides that "since a lawyer should not aid or encourage a layman to practice law, he should not practice law in association with a layman or otherwise share legal fees with a layman."

CONCLUSION

It is therefore our opinion that to permit the broad-scale announcement that you would be assisting the income

tax preparer in the preparation of tax returns, and assisting him in dealing with such problems as may come up would be tantamount to permitting the layman to solicit business based upon your legal counseling to him and for his clients.

Please understand that by this opinion, we are not suggesting that you cannot give a legal opinion to an income tax preparer on the consequences of handling certain matters in specific ways. Our opinion is confined to the specific question that you have asked and with reference to such question, we must inform you that our answer is that you cannot permit your client to communicate such fact to his present or potential customers.

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