

Nebraska Ethics Advisory Opinion for Lawyers
No. 72-5

WHILE AN ATTORNEY WHO OPERATES OR IS INTERESTED IN A LAY ADJUSTING AGENCY MAY NOT PRACTICE LAW GENERALLY, SUCH ATTORNEY MAY SEPARATELY AND INDEPENDENTLY PRACTICE LAW SUBJECT TO THE RESTRICTIONS THAT: (1) HE MAY NOT IN HIS LAW PRACTICE PERFORM ANY LEGAL SERVICE FOR INSURANCE COMPANIES WHICH UTILIZE OR MIGHT UTILIZE THE SERVICE OF THE ADJUSTING AGENCY, AND (2) HE CANNOT REPRESENT IN HIS LAW PRACTICE ANY CLAIMANT OR OTHER PERSON WHOSE MATTER GREW OUT OF OR HAS ANY RELATIONSHIP TO MATTERS HANDLED BY THE LAY ADJUSTING AGENCY.

SUPPLEMENTAL DISCUSSION:

Previously this Committee has issued an opinion which states the following rule:

"An attorney may not ethically engage in the general practice of law and at the same time own and operate an insurance investigation and adjustment business in the general area; and the ethical objections are not removed by incorporating the adjusting business and the lawyer withdrawing as an officer or director of the corporation."

We are now asked whether and to what extent an attorney operating or owning an interest in an adjustment agency may also practice law independently thereof.

This Supplemental Opinion assumes that any dual practice of the law and operation of a lay adjustment agency will conform to the unauthorized practice of law principles set forth in the statement entered into by the American Bar Association and the National Association of Independent Insurance Adjusters referred to in Informal Opinion No. 427 referred to in the earlier

opinion of the Nebraska Committee.

In the earlier opinion released by our Committee it was pointed out that the new Code of Professional Responsibility under consideration made no change in the ethical considerations previously set forth in our canons. Since that time of our earlier opinion there have been several additional opinions of the American Bar Association which added guidance in this area. The matter of dual practice of law and operation of a mortgage loan corporation was considered at length in Information Opinion No. 1022 where the opinion states as follows:

". . .it is not necessarily improper for an attorney to engage in a separate business, so long as it is done in a manner not inconsistent with the lawyer's duties as a member of the bar. In this connection, it is essential that such separate business not be used as a means for indirect solicitation on the attorney's behalf."

"It does not appear from the foregoing that the lawyer is using his relationship with the building and loan association as a feeder for business. If, as appears from the statement presented, the attorney intends to and does establish a separate office from that of the building and loan association, then such relationship between the attorney and the association would not be considered objectionable. However, this committee stresses the necessity for there being a complete and total separation of the attorney's office and physical facilities from that of the building and loan association, including separate and distinct:

- (1) Building and/or offices;
- (2) Telephones;
- (3) Telephone listings; and
- (4) Addresses, etc.

Provided the foregoing considerations are observed, we would, therefore, conclude that the arrangements described and proposed would not be violative of any of the Canons of Professional Ethics."

Thereafter in Informal Opinion No. 1046 it was held that an attorney may practice law and also perform legal research for a firm offering a research service to attorneys provided, however, in such dual operation the attorney conforms to all of the requirements of the canons of ethics.

The latest consideration and discussion of the problems involved in attorneys providing service for lay adjusting agencies and also independently providing such services as a part of a law practice is found in Informal Opinion No. 1161 dated February 19, 1971 where the opinion states:

"This Committee has been called upon many times to render its opinion as to the propriety of a lawyer, while in the practice of law, to engage in other businesses. It has been the opinion of this Committee that it is not necessarily improper for a practicing attorney to engage in another business provided such other business is not one that can readily be used as a means of procuring professional employment. This danger is evident when the other business engaged in by a practicing attorney is, for example, that of an accountant, a real estate broker, insurance agent, business consultant, marriage counselor or affiliation with a collection agency, for while those businesses may be conducted by a non-lawyer it would be most difficult if not impossible for a practicing lawyer engaged in any of those businesses to refrain from or avoid those acts which when performed by a lawyer constitute the practice of law and, therefore, the indirect if not direct solicitation of professional employment. See Informal

Opinions 424, 442, 520, 537, 716 and 775."

"A lawyer may properly undertake to represent an insurance company or claim adjuster in the investigation or settlement of a claim even though that activity is frequently engaged in by a non-lawyer. The burden, however, would be upon the lawyer or law firm accepting such employment to be most scrupulous and circumspect in conduct so as not to give the impression of soliciting representation from other possible claimants. In the opinion of the Committee, the law firm and its associates did not so act."

The foregoing Opinion No. 1161 notes that the conclusion reached under the present Code of Professional Responsibility is the same as the conclusions under the former canons of professional ethics.

We believe that the original opinion of the Nebraska Committee in this matter together with the supplemental citations herein support the rules set forth in the beginning hereof and delineate the extent to which an attorney may separately and independently practice law and operate or be interested in a lay adjusting agency.

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