

Nebraska Ethics Advisory Opinion for Lawyers
No. 11-02

A LAWYER WHO IS A FULL-TIME INSURANCE AGENT MAY ALSO PRACTICE LAW PROVIDED THAT THE LAWYER COMPLIES WITH THE RULES OF PROFESSIONAL CONDUCT, THAT THE LAWYER DOES NOT ACTIVELY SOLICIT LEGAL BUSINESS FROM HIS INSURANCE CLIENTS, THAT THE LAWYER DOES NOT ADVERTISE THAT HE IS A LAWYER, AND THAT THE LAWYER DOES NOT GIVE LEGAL ADVICE TO HIS LIFE INSURANCE CUSTOMERS WITHOUT WRITTEN INFORMED CONSENT FROM THE CLIENTS.

FACTUAL SITUATION

A lawyer who serves as in-house counsel for an insurance company would like to become a full-time captive insurance agent. While working for the insurance company, the lawyer wishes to provide legal advice to insurance customers and public persons who are not his insurance customers. The lawyer would like to advertise the fact that he has a law degree but would not represent that he is an insurance lawyer or actively seek to take cases from his insurance customers.

DISCUSSION

While the Model Rules of Professional Conduct do not specifically address permissible business practices in which active bar members may participate, there are several rules that are applicable to attorneys who wish to pursue other business opportunities while continuing to practice law. While a lawyer must take care to abide by all of the Rules of Professional Conduct, Rules 1.2, 1.4, 1.7, 1.8, 5.7, 7.1, and 7.2 are informative when determining which outside business practices may or may not be permissible.

The Advisory Committee has previously addressed several issues relating to the sale of insurance by lawyers. In Opinion No. 68-3, the Committee came to the conclusion that a lawyer could sell insurance other than life insurance as long as the lawyer avoided any suggestion that the insurance company served as indirect solicitation for his law business. In the same Opinion, the Committee referenced a ruling in Informal

Opinion No. 775 which remains useful. Informal Opinion 775 held that a lawyer may engage in an independent business “(1) if the separate business is clearly not necessarily the practice of law when conducted by a lawyer, (2) if it can be conducted in accordance with and so as not to violate the Canon, (3) if it is not used or engaged in such a manner as to directly or indirectly advertise or solicit legal matters for the lawyer as a lawyer, (4) if it will not ‘inevitably serve’ as a feeder to his law practice...”

Under the instant set of facts, the sale of insurance would not be the practice of law when conducted by a lawyer, if the lawyer conducted himself in accordance with the current Rules of Professional Conduct, and the insurance sales did not serve as a feeder to the lawyer’s law practice.

In order to insure that the lawyer’s sale of insurance does not serve as a feeder to his law practice, the Committee would deem improper any attempt to advertise the fact that he is a lawyer when soliciting business in his capacity as an insurance agent. Such a representation would constitute the indirect solicitation for his law practice which was deemed improper in Opinion 68-3 and other previous informal opinions. Once a prospective insurance customer becomes a client, however, the lawyer may disclose the fact that he has a law degree and may provide legal advice in some situations.

The questions presented in this matter differ from those previously answered in Nebraska in that the lawyer wishes to work primarily as an insurance agent while simultaneously providing legal services in limited situations. In addressing the issues, it is our opinion that Ethics Opinion 306 from the District of Columbia correctly states the duties of an insurance agent who is also a practicing lawyer. That Opinion states:

A lawyer who is also an insurance broker may sell insurance products to the general public provided the lawyer complies with the ethics rules. When selling

insurance to nonclients, the lawyer must ensure that the prospective purchaser understands that the lawyer is acting exclusively as an insurance broker and not as a lawyer in the transaction, and she must ensure that a lawyer-client relationship is not inadvertently created. When selling insurance products to clients, the lawyer must ensure that the transaction will not adversely affect the lawyer's professional judgment on behalf of the client; the terms of the transaction are fair, reasonable, and fully disclosed in writing to the client; the client is advised and given the opportunity to seek independent counsel regarding the transaction; the client is advised of the lawyer's interest in the transaction and of possible conflict of interest and attendant adverse consequences; and the client consents in writing to the transaction.

It should be noted that the District of Columbia currently allows multi-disciplinary practices while such practices have not been formally approved in Nebraska. While authority to change acceptable practice in Nebraska ultimately rests with the Nebraska Supreme Court, this committee feels that Opinion 306 of the District of Columbia is informative and applicable to the facts at hand.

In selling insurance to customers with whom the lawyer ultimately develops a lawyer-client relationship, the lawyer must take measures to ensure that the client understands the lawyer's dual role as insurance salesman and counselor. These measures include written notice of the lawyer's interest in any insurance transactions. In representing persons who are not insurance customers, the lawyer must ensure that he does not represent any clients with actual, implied, or apparent conflict with his insurance carrier employer.

CONCLUSION

In accordance with the previous Opinions of this Advisory Committee and Ethics Opinion 306 from the District of Columbia, we find under the facts and circumstances of this case that a lawyer may be employed as a full-time insurance agent and provide legal advice to insurance customers and others so long as the lawyer does not violate the

applicable Rules of Professional Conduct and gets informed consent in writing from the client which acknowledges the lawyer's interests in all transactions between the two parties.