Nebraska Ethics Advisory Opinion for Lawyers
No. 72-4

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.

CANONS INTERPRETED:

Canon 27 (Canons of Professional Ethics relating to advertising.)

Canon 33 (relating to partnerships between lawyers and non-professional persons.)

Canon 35 (relating to intermediaries.)

FACTUAL SITUATION

An insurance claims service organization owned by a lawyer as a sole proprietorship is engaged in the business of investigating and adjusting claims. The business involved four full-time adjusters and two secretaries and one bookkeeper. The business operation is franchised by a national organization that solicits business from various insurance companies.

The owner lawyer of this business proposes to incorporate it and withdraw thereafter as an officer, and possibly withdraw as a director. He desires to join a law firm in the practice of law.

QUESTION

The question presented is whether the lawyer owner of an insurance claims adjustment business may enter into a general practice of law under the above

circumstances.

DISCUSSION

From the facts submitted, it is assumed that the lawyer owner of the adjusting business upon entry into the general practice of law will continue to either be an owner of the business as a sole proprietorship or will be the owner of its capital stock if the business is incorporated. It is also assumed that he will not remain an officer or director of the business.

The combination of general law practice and insurance adjusting was the subject of consideration in Formal Opinion No. 47 (1932) of the American Bar Association, where the Committee states:

> "It is not necessarily improper for an attorney to engage in a business; but impropriety arises when the business is of such a nature or is conducted in such a manner as to be inconsistent with the lawyer's duties as a member of the Bar. Such an inconsistency arises when the business is one that will readily lend itself as a means for procuring professional employment for him, is such that it can be used as a cloak for indirect solicitation on his behalf, or is of a nature that, if handled by a lawyer, would be regarded as the practice of law. To avoid such inconsistencies it is always desirable and usually necessary that the lawyer keep any business in which he is engaged entirely separate and apart from his practice of the law and he must, in any event, conduct it with due observance of the standards of conduct required of him as a lawyer.
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> "Some businesses in which laymen engage are so closely associated with the practice of law that their solicitation of business may readily become a means of indirect solicitation of business for any lawyer that is

> associated with them. Opinions 31 and 35. The adjustment of claims, the incorporating of companies, and the handling of matters before governmental commissions and boards and in government offices fall within such classifications. It is difficult to conceive how a lawyer could conduct a claim adjustment bureau, a company for the organization of corporations, or a bureau for securing income tax refunds, without practicing law. In performing the services which he would ordinarily render in connection with any of these activities, his professional skill and responsibility as a lawyer would be engaged. The fact that a layman can lawfully render certain service does not necessarily mean that it would not be professional service when rendered by a lawyer. On the contrary, lawyers are frequently called upon to render such service for the very reason that it can be better rendered by a lawyer.
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> "The adjustment of insurance claims by a lawyer is professional employment. In performing such a service his professional skill and responsibility are engaged. He cannot properly render legal services to a lay intermediary for the benefit of its patrons. Opinions 8, 31, 35, 41 and 56. Furthermore the investigation and adjustment of insurance claims must frequently lead to some litigation, so that the solicitation of business by a bureau handling them must readily lend itself as a means of procuring professional employment for any lawyer in general practice who may be interested in or connected with it."

In the foregoing opinion, the Committee states that the objections expressed apply whether the adjusting business is operated in the lawyer's office or not.

The ethical problems involved in the joint venture above described are somewhat comparable to the ethical problems involved in law-accounting activities. In Formal Opinion No. 269 (1945), the Committee stated:

> ". . . if a lawyer goes into a partnership conducting an accounting or a collection business, he can no longer with propriety continue to hold himself out as a lawyer or continue to practice law. The accounting and collection business are fields open to laymen, and this so even if these activities involve necessarily a limited degree of legal knowledge.
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> "We desire to emphasize that the lawyer in the instant case and in like lay partnerships must completely disassociate himself from any practice or holding out that would indicate that he is a member of the bar or in any way engaged in practice as a lawyer. If, for example, he prepared a tax claim, his employer must understand that he is not acting as a member of the bar, but solely as an accountant."

Likewise in Formal Opinion No. 297 (1961), the opinion concludes:

> "The person who is qualified as both a lawyer and an accountant must choose between holding himself out as a lawyer and holding himself out as an accountant. As stated in the answer to Question 3, dual holding out is self-touting and a violation of Canon 27.

In Informal Opinion No. 427, the Committee had under consideration a situation where a lawyer working for an adjusting firm but maintaining no general law practice desired to participate in certain litigation with another attorney. The opinion indicates that he desired to participate in the handling of certain personal injury

litigation that might result from his work for the adjusting company. The Committee felt that this activity would be improper and that there would be an "inference of solicitation" in any such litigation which was handled.

The objective of the ethical canons in this area are directed to avoiding situations which, as stated in Informal Opinion No. 608 (1962) "might lead" to the use of insurance adjusting agency as a "feeder for his law practice."

For a further discussion of this matter see Drinker, Legal Ethics, page 221.

The incorporation of the adjusting business in the instant case would still leave the attorney as the owner of the business. As such owner or as the owner of its capital stock, he would remain subject to the undesirable consequence expressed in the foregoing opinions.

A review of the Code of Professional Responsibility which is under consideration and may be adopted by our Supreme Court does not suggest that any change would occur in this connection by reason of the substitution of that Code. The disciplinary rules therein contained, particularly those in DR 2-101 and DR 3-103 are quite comparable to the requirements of the present canons.

CONCLUSION

It is the conclusion of this Committee that a lawyer cannot engage in the general practice of law and at the same time be the owner of an insurance adjusting business in the same general area or the owner of the capital stock of such a business.