

Nebraska Ethics Advisory Opinion for Lawyers
No. 75-5

A LAWYER WHO AS A C.P.A. IS PRACTICING PUBLIC ACCOUNTING IN A FIRM MAY NOT ALSO PRACTICE LAW IN SUCH FIRM. THE LAWYER MAY SEPARATELY, INDEPENDENTLY AND OUTSIDE THE ACCOUNTING FIRM "PRACTICE LAW", BUT IF HE DOES, THEN ALL OF HIS ACTIVITIES AS AN ACCOUNTANT IN THE ACCOUNTING FIRM ARE SUBJECT TO ALL THE REQUIREMENTS OF THE CODE OF PROFESSIONAL RESPONSIBILITY.

QUESTION PRESENTED

A member of the Bar who is also a Certified Public Accountant has entered into a partnership of C.P.A.'s to practice accounting. He asks whether he can probate estates and do legal work under an arrangement whereby his legal fees are not divided with the Accountants.

CANON INVOLVED

The canon directly involved is DR 2-102(E), reading as follows:

(E) A lawyer who is engaged both in the practice of law and another profession or business shall not so indicate on his letterhead, office sign, or professional card, nor shall he identify himself as a lawyer in any publication in connection with his other profession or business.

DISCUSSION

The problem of dual practice in law-related professions under the new Code of Professional Responsibility is the subject of Formal Opinion 328 of the American Bar Association. As pointed out therein, there is now no absolute prohibition of dual practice, but there are many restrictions and limitations on such dual practice. In this

regard the new Code constitutes a modification in some respects of the former restrictions on dual practice. As held in Opinion 328, a lawyer who is also an accountant may practice both professions in accordance with the following rule:

It is not necessarily improper for a lawyer simultaneously to hold himself out as a lawyer and as a certified public accountant. A lawyer who practices as a certified public accountant while engaged in the practice of law shall not identify himself as a C.P.A. on his legal profession letterhead, office, sign, or professional card. A lawyer who is engaged, out of one office, in the practice of law and in another profession or occupation which is closely related to law must conform to the Code of Professional Responsibility in conducting such activities.

The earlier opinions cited and followed in Opinion 328 make it plain that any lawyer who practices accounting is "acting as a lawyer and subject to the Canons" as to everything done by him as an accountant. This places almost insurmountable restrictions and barriers to the practice of accounting in that everything he does as an accountant "constitutes the practice of law."

In our opinion the possibility of a lawyer practicing accounting in his own office does not permit the lawyer to practice law in an accounting firm as suggested in the question. The admonition in Opinion 328 is pertinent:

. . . a lawyer may conduct, in compliance with DR2-102(E), his law practice and a second occupation, not law-related, from one office; and he may practice from the same office both as a lawyer and as a member of a law-related profession or occupation, such as a marriage counsellor, accountant, labor relations consultant, real estate broker, or mortgage broker, if he complies not merely with DR2-102(E) but with all provisions of the Code of

Professional Responsibility while conducting his second, law-related occupation. A lawyer may not, of course, escape his obligations under DR2-102(E) and under other disciplinary rules of the Code by the stratagem of ostensibly dividing into two separate offices his office quarters which are, for practical purposes, unitary or integral. The following language from Informal Opinion 775 (1965) is relevant:

While . . . the Committee does not consider it to be necessarily unethical to practice law and concurrently, but in different transactions, engage in the real estate business, the Committee is of the opinion that to do so in accordance with the Canons is so difficult that suspicions of unethical conduct are almost inevitable. For that reason alone, it is our opinion that only a very few lawyers will expose themselves to such suspicions on the part of their brother lawyers and the public. The lawyer who does so must be willing to undertake the tremendous burdens of conducting his real estate business ethically under our Canons

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