

Nebraska Ethics Advisory Opinion for Lawyers  
No. 78-10

IT WOULD NOT BE ETHICAL FOR A FULL-TIME PRACTICING ATTORNEY TO SIMULTANEOUSLY BECOME A PARTNER, SHAREHOLDER, DIRECTOR OR OFFICER IN A CORPORATION ESTABLISHED FOR THE SPECIFIC PURPOSE OF FURNISHING LEGAL EDUCATIONAL CONSULTING, WITH THE ATTORNEY TO BE AN INTEGRAL PART OF THE RESEARCH AND CONSULTING.

FACTS

You state you have been asked to become a partner or a shareholder, director or officer in a corporation to be established for the specific purpose of furnishing legal educational consulting. The entity established would do research and furnish consultant services in the field of law and education. The entity established would advertise in legal and educational journals. You would be an integral part of the research and consulting, but would continue in the full-time practice of law.

CONCLUSION

The Committee is of the opinion that the proposed arrangement is prohibited by the Code of Professional Responsibility.

DR 3-101 (A) provides:

"A lawyer shall not aid a non-lawyer in the unauthorized practice of law."

DR 3-102 (A) provides in part:

"A lawyer or law firm shall not share fees with a non-lawyer..."

DR 3-103 (A) Provides:

"A lawyer shall not form a partnership with a non-lawyer if any of the activities of the

partnership consist of the practice of law."

The following provisions of the Code of Professional Responsibility and ethical considerations also have application here:

DR5-101 (A): Except with the consent of his client after full disclosure, a lawyer shall not accept employment if the exercise of his professional judgment on behalf of his client will be or reasonably may be affected by his own financial, business property or personal interests.

DR5-107 (A): Except with the consent of his client after full disclosure, a lawyer shall not:

(1) Accept compensation for his legal services from one other than his client.

(2) Accept from one other than his client anything of value related to his representation of or his employment by his client.

(B): A lawyer shall not permit a person who recommends, employs, or pays him to render legal services for another to direct or regulate his professional judgment in rendering such services.

(C): A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(1) A non-lawyer owns any interest therein, except that a . . . (inapplicable);

(2) A non-lawyer is a corporate director or officer thereof; or

(3) A non-lawyer has the right to direct or control the professional judgment of a

lawyer.

EC5-1: The professional judgment of a lawyer should be exercised within the bounds of the law, solely for the benefit of his client and free of compromising influences and loyalties. Neither his personal interests, the interests of other clients, nor the desires of third persons should be permitted to dilute his loyalty to his client.

There is no doubt that the entity which you describe would be engaged in the practice of law.

Ethical consideration 3-5 provides:

"What constitutes the practice of law? EC3-5: Functionally, the practice of law relates to the rendition of services for others that call for the professional judgment of a lawyer. The essence of the professional judgment of the lawyer is his educated ability to relate the general body and philosophy of law to a specific legal problem of a client . . ."

The opinions of the American Bar Association Committee on Ethics support the foregoing conclusion:

Formal Opinion No. 201 States:

"A business partnership between an attorney and a layman is permissible unless the service rendered is regarded as the practice of law when performed by an attorney."

Informal Opinion 1264 dealt with legal research firms supplying legal research for lawyers. The firm was wholly owned by a layman. The Committee held that the corporation would be engaged in the authorized practice of law and lawyer participation was forbidden. DR 3-101 (A).

Accordingly, your participation in the proposed entity

would be prohibited and the questions you ask must be answered in the negative.

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