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CONCURRENTLY ENGAGING IN THE PRACTICE  
OF LAW AND A REAL ESTATE BUSINESS

LEGAL ETHICS INQUIRY 76-1

By letter dated April 5, 1976, you advised that you are engaged in the practice of law in West Virginia and that you are also a licensed real estate broker and employ licensed salesmen who are not active but "only holding their cards so this option is open when they retire from their present employment." You enclosed in your letter pictures of your office window which bears the words "X, ATTORNEY AT LAW" and in the lower left corner the words "X, REAL ESTATE, X, BROKER." Although you did not so state in your letter, your office sign implies that your real estate business is conducted from your law office. You ask if your sign violates the Code of Professional Responsibility.

The precise provision of the Code of Professional Responsibility which is applicable here is DR 2-102(E) which provides as follows:

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.

The problem which you have presented to the Committee involves considerations which are of greater significance than the propriety of your office sign. It involves the basic question of whether a

practicing lawyer may also carry on another business, either from his law office or elsewhere. There is, of course, nothing in the Code of Professional Responsibility to prevent a lawyer from engaging in an occupation or business entirely distinct from and unrelated to his law practice. Thus, no one would dispute the right of a lawyer to be a teacher, a musician, a doctor, or a farmer or to engage in selling merchandise, provided he in no way uses such business or occupation to advertise or as a feeder to his law practice. (See Henry S. Drinker, Legal Ethics, pp. 221-222.) The problem arises when the lawyer engages in business related to the practice of law.

In Opinion 57 the American Bar Association said:

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 practice 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.

In Informal Decision C-682 (December 27, 1963) the Committee on Ethics and Professional Responsibility of the ABA stated:

The Committee has grave doubts as to whether a lawyer could, without violating the canons, practice law and conduct a real estate business at the same time, particularly from the same office. However, it is recognized that there are situations where a lawyer must supplement his income by engaging in some other lucrative occupation, and if the collateral occupation can be followed by adhering to the canons and their interpretation by the opinions of this Committee, then it would not be improper. Each case should be judged on its own peculiar facts. The lawyer may not, by engaging in the separate business, advertise his law practice or use the business as a feeder.

In its Informal Opinion 775 (February 15, 1965) the ABA Committee said:

The Committee is of the opinion that the real estate brokerage business can qualify under these present criteria. The Committee recognizes, however, that this is a most difficult problem of legal ethics and admonishes that a practicing lawyer who also engages in the business of a real estate broker must use the most scrupulous care to conduct the real estate business as to avoid offending the ethics of our profession and to keep his legal and real estate activities segregated and separate. The real estate business must not be used or permitted to directly or indirectly advertise him as a lawyer or to solicit legal employment for him. Under no circumstances should the real estate business be conducted in or adjacent to the lawyer's office if it advertises in any manner; nor in such circumstances (advertising and solicitation of real estate business) may it be conducted in the lawyer's name, but instead it would have to be conducted under a corporate or other name not including the name of the lawyer. Since the real estate business is so close to the practice of law in many respects, we do not believe that under any circumstances would it be ethical for a lawyer to divide real estate commissions earned as a result of his efforts with a non-lawyer, or to engage in it with a non-lawyer, because of Canons 33 and 34 and, possibly, Canon 47.

Also, the lawyer would be required, without exception, to refuse to act as a lawyer in connection with a transaction initiated by him as a broker, and he should be most hesitant to act as a lawyer for a person he first had contact with while acting as a broker.

The New York State Bar Association in its Professional Ethics Committee Opinion 135 (April 9, 1970), construing DR 2-102(E), said:

Lawyers may conduct insurance and real estate businesses but not in a manner that identifies them as lawyers or tends to promote their name or law practice. The Committee believes that it would be extremely difficult, if not impossible, to both practice law and to engage in the other activities in the same office without violating this disciplinary rule. N.Y. State 128 (1970). Advertisements of the insurance and real estate businesses may not use the lawyers' names or make reference directly or indirectly to the fact that the principals are lawyers. . . .

To answer your specific question, the Committee is of the opinion that your office sign, since it advertises the real estate business which is conducted from your office under your name, is improper.

The Committee is also of the opinion that:

(1) If a separate business is clearly not necessarily the practice of law when conducted by a lawyer, and

(2) If it is not used or engaged in in such manner as to directly or indirectly advertise or solicit legal matters for the lawyer as a lawyer, and

(3) If it will not "inevitably serve" as a feeder to his law practice, and

(4) If it is not conducted in or from a lawyer's law office, except in cases where the volume of the law practice and business is so small that separate quarters for either is not economically feasible and where, even in such cases, there is no indication on the shingle, office door, letterhead, or otherwise that the lawyer engages in any activity therein except the practice of law, it is not necessarily a violation of the Code of Professional Responsibility for a practicing lawyer to engage in such a business or activity.

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 Code of Professional Responsibility is so difficult that suspicions of unethical conduct are almost inevitable. For that reason alone, it is the Committee's opinion that only a very few lawyers should expose themselves to such suspicions on the part of other lawyers and the public. The lawyer who does so must be willing to undertake the tremendous burden of conducting his real estate business ethically under the Code of Professional Responsibility, and if a question of unethical conduct is raised, the burden undoubtedly will be upon him to establish the propriety of his conduct.

For the reasons stated above, the Committee is of the opinion that the conduct of the real estate business from your law office

under the name in which you engage in the practice of law is improper. Your real estate business and law practice should be conducted from separate quarters. Even though under certain circumstances, as indicated above, it might be proper to conduct the real estate business and law practice from the same office, even in such cases there must be no indication on the shingle, office door, letterhead, or otherwise that the lawyer engages in any activity therein except the practice of law and the business should be conducted under a corporate or other name not including your name.