

UNPUBLISHED LEGAL ETHICS OPINION 76-5

(October 12, 1976)

Reference is made to your letter of September 22, 1976, in which you request the opinion of this Committee as to the propriety of your being a licensed life insurance agent as well as a member of The West Virginia State Bar. Although you did not give details as to the nature of your activities as a life insurance agent, we assume that you will engage in the usual solicitation of business and in the splitting of commissions with a general agency.

DR 2-104(E) of the Code of Professional Responsibility 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.

By implication this disciplinary rule would appear to permit a lawyer to practice law and simultaneously engage in any other respectable business or profession, subject, however, to the restrictions stated in the rule and any other relevant restrictions in the Code of Professional Responsibility.

The basic requirement of this rule is that letterheads, office signs and professional cards may not be used to publicize simultaneously both a law practice and another business or profession in which the lawyer may be engaged. Similarly, advertisements, and publications of any kind used in the other occupation, may not

identify the lawyer participant in the business or profession as a lawyer, with the narrow exceptions permitted by DR 2-101(B) ^{2, 12}(3).

The fundamental principle behind these limitations is to protect the public and the profession against improper solicitation, advertising or commercialization, and to keep the other occupation from being used as a cloak for improper solicitation or from being deliberately used as a direct or indirect feeder of legal work.

Where the other occupation or business is one entirely unrelated to the practice of law, the danger of improper or unprofessional conduct is considerably less than where such occupation is so closely intertwined with legal matters that it is difficult to distinguish the lawyer's conduct in his other occupation from his conduct as a lawyer. Examples of unrelated businesses would be the operation by a lawyer of a shopping center, a retail store, or manufacturing enterprise. Such an unrelated business could advertise its products or services to the public and be conducted in the same building as the lawyer's office, provided the requirements of DR 2-102(E) are met.

Where the other occupation is that of accountant, collection agency, claims adjuster, labor relations consultant, business consultant, insurance agent, real estate broker, loan or mortgage broker, or any other business where the lawyer participant's activities would be likely to involve frequent solution of problems that are essentially legal in nature, the risk of having the other occupation used improperly as a feeder for legal services is very

great. To avoid this, every precaution should be taken to separate the other profession or business from the legal practice.

In Informal Decision C-424, dated June 22, 1961, the Committee on Ethics and Professional Responsibility of the American Bar Association stated as follows with respect to a practicing attorney selling life insurance:

Selling life insurance is not in itself the practice of law, but a sale of life insurance often involves legal problems, such as estate and inheritance tax questions, the taxation of annuity income, the establishment of trusts, and matters involved generally in estate planning. The fact that a layman might lawfully render some such service does not necessarily mean that it would not be a professional service when rendered by a lawyer. Such matters are of a nature that if handled by a lawyer would be regarded as the practice of law within the filings of the opinions above referred to. We do not see how, as a practical matter, a life insurance agent, properly performing his duties to his customers, under modern conditions, could avoid dealing with such legal problems. Under such circumstances it also readily lends itself as a means of procuring professional employment for the agent lawyer. The statement which the Chairman of this Committee made questioning a practicing lawyer also serving as an investment counsel is most appropriate to the present inquiry.

The Committee is, therefore, of the opinion that it would be improper for a practicing attorney to also engage in the sale of life insurance.

In Informal Decision 556, dated May 31, 1962, the ABA Committee stated:

Apparently, you contemplate somewhat limited activity in the life insurance field. You would qualify as a licensed insuring agent, but

your activities would be limited to referring clients who need life insurance to your friend who is an insurance broker and in return for such referral you would receive a portion of the insurance commission.

While theoretically it may be possible to operate in this very limited way, we question as a practical matter whether activities would be so limited. Even as to clients, in order to determine the need for life insurance, it would seem necessary to make inquiry of them and a certain amount of 'selling' would in most cases be involved. Furthermore, if the subject of life insurance were discussed between a lawyer and his client, it would be natural for the client to seek advice as to the type of insurance. Such matters as setting up an insurance trust, which would involve legal work, would doubtless come up for discussion and in this fashion there would be represented an element of solicitation for legal work.

There also would be present a conflict of interest in that you would expect to receive a portion of the insurance commission, and this would have to be resolved to comply with Canon 6, which reads, in part, as follows: 'It is unprofessional to represent conflicting interests except by express consent of all concerned given after a full disclosure of the facts.'

This Committee concludes that lawyers may under some circumstances engage in the insurance business 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 insurance business in the same office without violating DR 2-102(E). Advertisements of the insurance business may not use the lawyer's name or make reference directly or indirectly to the fact that the principals are lawyers.

No advertising and promotion material used in connection with the insurance business may disclose the fact that you are a lawyer, and the business should be conducted on premises sufficiently separate from those in which you practice law to avoid having your clients or customers of the insurance business gain the impression that the two are related. In such situations the lawyer should not accept as a legal client, for matters originating through the insurance business, a person whose initial contact with him was as a client or customer of his insurance business, unless the lawyer-client relationship clearly developed entirely on the initiative of the client, without solicitation on the part of the lawyer, and was not dependent upon the lawyer's participation in the other occupation. Thus, absent such conditions, it would be professionally improper for a lawyer who conducts a life insurance business to handle legal work connected with a transaction which originates through his life insurance business and which also constitutes the lawyer's initial contact with the client as his lawyer. Even as to totally unrelated problems, the lawyer would be well advised normally to refuse to accept as legal clients all who were initially clients of his insurance business because of the possible appearance of professional impropriety, unless it is clear that his client has selected him for reasons not related to his participation in the other business.

You stated in your letter that "I have found in Drinkers on Legal Ethics that it is not improper" for a lawyer to engage in

the insurance business. At page 221 of his work on Legal Ethics, Henry S. Drinker states:

Much, of course, depends on the surrounding circumstances. In small communities where everyone knows what everyone else is doing, and where there is comparatively little remunerative law practice, it is quite the usual thing for lawyers to be engaged in collateral occupations such as licensed broker or insurance agent. If they do so using distinct letterheads and not using the other occupation as a means of solicitation or of securing employment as a lawyer, it is not considered improper.

Thus a lawyer may properly conduct an independent real estate business in another county, or may offer to manage an apartment house in exchange for the use of an apartment, or may publish a newspaper and write editorials, but not to exploit himself as a lawyer, or may be the salaried trust officer of a bank.

Where, however, the second occupation, although theoretically and professedly distinct, is one closely related to the practice of law, and one which normally involves the solution of what are essentially legal problems, it is inevitable that, in conducting it, the lawyer will be confronted with situations where, if not technically, at least in substance he will violate the spirit of the Canons, particularly that precluding advertising and solicitation. The likelihood of this is the greatest when the collateral business is one which, when engaged in by a lawyer, constitutes the practice of law and when it is conducted from his law office. Thus, there is apparently no doubt as to the impropriety of conducting, from the same office, a supposedly distinct and independent business of collection agent, stock broker, estate planning, insurance adjusters bureau, tax consultant, or mortgage service; or to organize and operate under a trade name, even though in an adjacent office, a corporation conducting servicing business--drafting charters

and other corporate papers. Clearly, a lawyer may not use his legal stationery to solicit business in the collateral line. [Henry S. Drinker, Legal Ethics, pp. 221-22 (1954)]

We do not consider Mr. Drinker's statement to be inconsistent with this opinion.