
**E-65-2 Attorney employee of accounting firm
rendering legal service for customer is
improper**

Question

Would it be a breach of professional ethics for an attorney employed as house counsel for an accounting firm to do estate planning for an accounting customer of his employer?

Opinion

It is clear that it would be unethical for him to do so.

This matter is covered by Opinion 297 of The American Bar Association Committee on Professional Ethics from which we quote as follows:

Question 1: When a person becomes a lawyer he takes on a mantle that he cannot thereafter take on or off as he pleases. Conduct in which he engages which involves the practice of law when engaged in by lawyers must be in accordance with the ethical standards of the profession if he is to retain his professional status. Even though a particular activity may be open to a layman, if such activity is the practice of law when engaged in by a lawyer, one who is a lawyer cannot free himself of the ethical restraints of the profession in carrying on such activity merely by announcing he is to be regarded as a layman for this particular purpose.

Canon 47 provides as follows:

No lawyer shall permit his professional services, or his name, to be used in aid of, or to make possible, the unauthorized practice of law by any lay agency, personal or corporate.

This Canon clearly prohibits any lawyer employed by a firm of public accountants from aiding or making possible the practice of law by such firm. Whether particular conduct by the firm which the lawyer is aiding or making possible in the unauthorized practice of the law is a matter for the determination of the Standing Committee on the Unauthorized Practice of the Law.

It is proper for the lawyer-employee to give legal advice to his lay employer on legal matters personal to the employer. If, however, the legal advice given to the employer is to enable the employer to perform services for the employer's

client, then such advice may be aiding or making possible the practice of law by the employer and, if so, the lawyer will have violated Canon 47.

The fact that a firm of accountants may be able to perform a particular service to its clients unaided by any advice from a lawyer without being engaged in the unauthorized practice of law does not necessarily protect the lawyer-employee from a violation of Canon 47 if he aids in the performance of such service. When the advice of a lawyer-employee is sought by a lay employer to enable the latter to render a service to a client, whether the lawyer-employee is aiding or making possible the practice of law by the employer is to be judged, not on the basis of the nature of the conduct of the employer when he proceeds unaided by a lawyer, but rather on the basis of whether the advice given by the lawyer-employee would involve the practice of law if given by him directly to the client.

Canon 35 provides in part as follows:

“The professional services of a lawyer should not be controlled or exploited by any lawyer. A lawyer’s responsibilities and qualifications are individual. He should avoid all relations which direct the performance of his duties by or in the interest of such intermediary. A lawyer’s relation to his client should be personal, and the responsibility should be direct to the client.”

When a lawyer-employee advises his lay employer in regard to a matter pertaining to the affairs of a client of the employer and the giving of such advice by the lawyer-employer directly to the client would involve him in the practice of law, the lawyer is proceeding in violation of Canon 35 when he operates through his employer as an intermediary.

(Note—Under DR 3-101 and 3-102, Code of Professional Responsibility, the result would be the same.)