
E-83-14 Dual practice: Service organization and law office

Question

An opinion has been requested of the State Bar Professional Ethics Committee concerning the propriety of a corporation owned by two attorneys and a nonlawyer and operating out of the lawyers' office, advertising its availability to provide non-legal services to the trucking industry.

Facts

An attorney wishes to establish with his law partner a company to provide services to the trucking industry. The new entity would be a Wisconsin business corporation with the attorney, his partner and a nonlawyer as sole shareholders. The new company proposes to provide services such as preparation of forms relating to licensing, registration, fuel tax reporting and tariffs. The new company will function by means of separate stationery, a separate phone number and would not indicate in any way that the attorney shareholders are attorneys or make reference to their firm. The new company, however, would operate out of the attorneys' law office and would be staffed by secretaries of the attorneys' law office.

Opinion

In Formal Opinion E-82-11 (Wis. Bar Bulletin, December 1982), the State Bar Professional Ethics Committee set forth a comprehensive discussion on the issues of dual business practice. In that opinion, the committee abandoned the view that certain second occupations were prohibitible per se as being so inherently solicitous as to constitute improper "feeders" of a law practice. The committee adopted the view set forth in ABA Formal Opinion 328 which replaced the inherent feeder approach with an analysis of second occupations proceeding on a case-by-case basis, with proscription based upon specific violations of the Code of Professional Responsibility.

ABA Formal Opinion 328 distinguished second occupations which are law related from those which are not, stating: “There is little ethical difficulty with the operation of an unrelated occupation from the same location as a lawyer’s law office so long as the lawyer complies with DR 2-102(E).” The equivalent Wisconsin Supreme Court Rule is SCR 20.08(5). In connection with practice from the same office, ABA Formal Opinion 328 provides that if the second occupation is so related as to be inseparable from the law practice, both practices are bound by the Code of Professional Responsibility.

ABA Formal Opinion 328 failed, however, to set forth a test for distinguishing law-related activities from those which are unrelated to the practice of law. Rather, the opinion cited New York State Bar Opinion 206 (1971) and provided illustrations of those second occupations considered unrelated. New York State Bar Opinion 206 sets forth the following tests for distinguishing law-related occupations from those unrelated to the practice of law:

A totally unrelated occupation would be one where the products or services provided to customers or clients would not involve either services or a need for services which would be essentially legal in nature . . .

(A law-related occupation is any) business where the lawyer-participant’s activity would be likely to involve frequent solution of problems that are essentially legal in nature. . . .

44 N.Y.S.B.J. 120, 121 (1971).

In light of the above, the proposed trucking service company appears to be a law-related second occupation. The main purpose of the new company is to facilitate compliance with state and federal regulations, which is essentially a legal activity. Although the outlined activities may be done by a layman, the fact that these activities have been, in the past, undertaken by lawyers is some evidence of the law relatedness of the second occupation.

Furthermore, the second occupation operating from the same office as the lawyer participants’ office is so related as to be inseparable from the law practice. Accordingly, the second occupation is subject to the existing Supreme Court Rules and statutes governing solicitation, advertising and barratry.