

**NEW YORK STATE BAR ASSOCIATION**  
**Professional Ethics Committee Opinion**

- (a) he may undertake the suit against his former client, and
- (b) if so, may he properly make use of the file of the plaintiff in the original action, through the attorney in that suit?

OPINION

The Committee believes that the answer to question (a) is "no".

Canon 6, in part reads:

"The obligation to represent the client with undivided fidelity and not to divulge his secrets or confidence forbids also the subsequent acceptance of retainers or employment from others in matters adversely affecting any interest of the client with respect to which confidence has been reposed."

Although it is clear that the two accidents are unrelated, and that the facts as to the first were made public by the filing of a notice of claim in a public office, it is also clear that both accidents occurred by reason of the same defect in the premises. Under such circumstances the language in In Re Boone 83 Fed. 944, at 952-3, seems appropriate:

"The test of inconsistency is not whether the attorney has ever appeared for the party against whom he now proposes to appear, but it is whether his accepting the new retainer will require him, in forwarding the interests of his new client, to do anything which will injuriously affect his former client in any matter in which he formerly represented him, and also whether he will be called upon, in his new relation, to use against his former client any knowledge or information acquired through their former connection."

On the subject generally, see:

Drinker - pg. 104

Opinions, N.Y.Co. Lawyers' Assn., #350,220,119.

Question (b) becomes academic.

Opinion #26 - 2/9/66 (17-65)

Topic: Dual Practice.

Business Feeder for Law Practice.

Overruled (in part) by 493

Digest: Improper for lawyer to use his name in real estate business and to conduct both activities from the same office.

Canons: Former Canons 27, 33, 34, 47

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QUESTION

A. B., an attorney practicing in a small town in New York State also conducts a real estate agency under the name "The A. B. Agency" and employs sales people on a commission basis. He advertises in local papers for listings under the name of the Agency. Both activities are conducted from the same office but separate stationery is used for the real estate transactions and A. B.'s name appears on the real estate letterhead as "A. B. Licensed Broker". Signs offering properties for sale contain only the name and address of the A. B. Agency and its telephone number. The lawyer explains that in the locality where he is practicing it is necessary to have other interests in order "to remain economically alive". Please advise whether on the above stated facts there is a violation of the Canons of Ethics.

OPINION

In the circumstances stated, it is the opinion of the Committee that A. B. cannot, without violating the Canons of Professional Ethics, practice law and conduct a real estate business in the manner described even though in the small town in which the practice is conducted it is essential that a lawyer "have other interests in order 'to remain economically alive'".

The principal controlling factor which renders the conduct ethically objectionable is the incorporation in the name of the real estate agency of the lawyer's proper name. This fact, coupled with the fact that both activities are conducted from the same office, albeit separate stationery and separate telephone listings are used, violates Canon 27 relating to advertising and solicitation.

The Informal Decision of the Committee on Legal Ethics of the American Bar Association (No. 775 - 2/15/65) is apposite although particularly directed to the proposition "Practicing Lawyers also Engaging in Real Estate Business in Large Urban Centers". (Emphasis added.) In this decision, after an exhaustive consideration of all its related opinions concerning the conduct by practicing lawyers of independent businesses and after concluding that it is not necessarily a violation of the Canons to engage in real estate business, the Committee stated in pertinent part (p. 6):

"\* \* \* 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 so 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 (sic) to directly or indirectly advertise him as a lawyer or to solicit legal employment for him. Under

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no circumstances should the real estate business be conducted in or adjacent to the lawyer's law 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 would have to be conducted under 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 contacts with while acting as a broker. [Emphasis supplied unless otherwise indicated.]

Use of the lawyer's name in the real estate business and having the two firms in the same office space bring the conduct outlined in the question within the condemnation of the above quotation, the contents of which we adopt.

Opinion #27 - 3/1/66 (12-65) Topic: Legal Research Service.

Digest: Improper to offer legal research service to business corporations or non-lawyers, but no impropriety in offering such service to other lawyers.

Canons: Former Canons 27, 45, 47

QUESTION

Two members of the New York Bar are considering the organization of a corporation by them or their employment by a corporation organized by others which will render legal research service. The service would consist of receiving legal questions submitted by lawyers or business corporations, researching the questions and supplying the customer with the applicable cases and statutory law. They would express no opinion as to the answers to the questions or offer any advice thereon.

They have asked (i) whether they may render this service to or through a corporation and (ii) whether and how they or the corporation may advertise the availability of the service.