

NEW YORK STATE BAR ASSOCIATION  
Professional Ethics Committee Opinion

Opinion #128 - 3/19/70 (6-70)      Topic: Dual Practice: Accountant-  
Lawyer

Modified by #206

Overruled (in part) by 494

Digest: Improper for a lawyer to  
indicate practice of both  
law and accounting in one  
office

Code\*: DR 2-102 (E)

QUESTION

May an attorney engage in the dual practice of law and public  
accounting in one office?

OPINION

DR 2-102 (E) 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."

Prior to adoption of this Disciplinary Rule, ABA 279 (1961) held  
that it was improper for a lawyer to practice both law and accountancy.  
The new Disciplinary Rule does not forbid dual practice but is  
designed to prevent use of accounting practice or another business  
or profession from being used as a feeder for the law practice by  
forbidding the lawyer in connection with the other business or  
profession to identify himself as a lawyer. The Committee believes  
that it would be extremely difficult, if not impossible, to practice  
both professions in the same office without violating this  
Disciplinary Rule.

Opinion #129 - 3/19/70 (7-70)      Topic: Restrictive Covenant  
Partnership Agreement

Digest: Partnership agreement may not  
restrict a lawyer after leav-  
ing partnership from accepting  
partnership clients except on  
retirement

Code\*: EC 2-26; 2-31  
DR 2-108 (A)

QUESTION

May a partnership agreement restrict a lawyer after leaving the  
partnership from accepting employment by persons who were theretofore  
clients of the partnership?

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

OPINION

EC 2-26 provides in pertinent part:

"in furtherance of the objective of the bar to make legal services fully available, a lawyer should not lightly decline proffered employment."

EC 2-31 provides in pertinent part:

"Full availability of legal counsel requires both that persons be able to obtain counsel and that lawyers who undertake representation complete the work involved."

DR 2-108 (A) provides as follows:

"A lawyer shall not be a party to or participate in a partnership or employment agreement with another lawyer that restricts the right of a lawyer to practice law after the termination of a relationship created by the agreement, except as a condition to payment of retirement benefits."

See also ABA 300 (1961); ABA Inf. 910 (1966); N.Y.City 688 (1945); cf. ABA Inf. 521 (1962).

A covenant restricting a lawyer after leaving the partnership from fully practicing his profession appears to this Committee to be an unwarranted restriction on the right of the lawyer to choose his clients in the event they seek his services and an unwarranted restriction on the right of the client to choose the lawyer he wishes to represent him. Accordingly, the Committee is of the opinion that it would be improper for a partnership agreement to contain such a restrictive covenant, except as a condition to payment of retirement benefits.

Opinion #130 - 3/19/70 (9-70)      Topic: Part-time District Attorney  
Conflict of Interest

Digest: Not proper for a part-time district attorney to represent a person certified as an addict under the Mental Hygiene Law in habeas corpus proceeding

Code\*: Canon 9  
EC 9-2  
DR 9-101

QUESTION

A part-time district attorney, who is permitted to practice in a county in New York, asks whether it would be ethically proper for him to represent in a habeas corpus proceeding a client who had been committed as a drug addict under the New York State Mental Hygiene Law. The People of the State are a party to the proceeding.