



## Committee on Professional Ethics

Opinion #421 - 10/29/75 (85-75) Topic: Reviewing work of other lawyer.

Digest: Not improper for accountant's lawyer to accept employment to review work of lawyer for accountant's client when relevant to accountant's work; not improper for him to present his views in behalf of accountant to board of directors of accountant's client on consent of that client.

Code: Canon 3  
DR 3-101(A)

### QUESTION

May a lawyer accept employment by an accountant to review a pension plan prepared by the attorney for accountant's corporate client and appear with the accountant before the board of directors of accountant's client as legal advisor to the accountant?

### OPINION

It would not be improper for the lawyer to accept employment by the accountant and give the accountant advice concerning the pension plan for the accountant's own purposes, i.e., that he may understand the plan and be better able to perform his duties, etc. However, if the legal advice given to the accountant is to enable the accountant, in turn, to give legal advice to the accountant's client on its legal problems, then the acceptance of employment by the lawyer and the legal advice to the accountant may be a violation of Canon 3 and DR 3-101(A), which provides that "a lawyer shall not aid a non-lawyer in the unauthorized practice of law", ABA 297 (1961), and would be improper.

In the present case, the accountant apparently seeks to avoid the latter possibility by having the lawyer appear with him before the board of directors of the corporate client. It is a matter within the discretion of the board of directors as to whether it wishes the accountant to appear before it with counsel and as to whether it informs the corporation's counsel of such appearance. A client may retain a second lawyer solely to evaluate the work of a lawyer previously retained and may do so without informing the first lawyer. N.Y. State 310 (1973). While the corporate client itself in the present case is not retaining the lawyer to review the work of its counsel, it does consent that the lawyer appear before it for this purpose. This is an equivalent, and the interests of the accountant and client are not adverse so as to require the presence of or notification of its counsel.

Accordingly, the lawyer may appear before the board of directors as counsel to the accountant and present and explain the legal advice he has given the accountant, without informing the client's prior

counsel if the client does not desire it.

However, the lawyer's position is a delicate one and the Committee repeats the cautions of N.Y. State 310 (1973). The lawyer should seek permission to communicate with the corporate client's counsel before rendering an adverse evaluation, so as to be sure it is given with adequate understanding of all relevant facts, and he should observe the generally accepted ethical precept which condemns any wrongful or improper disparagement of another lawyer or his work in an endeavor to supplant him as attorney for the client. Drinker, Legal Ethics 191; N.Y. State 305 (1973).

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