

FORMAL OPINION NO. 103

The Ethics Committee has received an inquiry as to whether an attorney may ethically conduct a financial consultant and investment counseling business in which he or she endeavors, as part of that business, to sell securities, manage investment portfolios, administer investment accounts and sell life insurance in addition to the practice of law. We conclude that the operation of such a business would inevitably result in violation of disciplinary rules.

Under the former A.B.A. Canons, the multiple occupations proposed by this inquiry would have been prohibited. Prior decisions of the American Bar Association condemned any dual occupation which created the possibility of "indirect solicitation" or "feeder of a law practice." See, A.B.A. Ops. 57, 225, 227. And see particularly Inf. Op. 442, Prohibiting Simultaneous Practice of Law and Engaging in Business as a Securities Broker. However, the current code of professional responsibility contains no outright prohibition against a lawyer engaging in another business, and A.B.A. Formal Opinion 328 abandoned any further reliance on the concepts of indirect solicitation or feeder to a law practice.

However, in carrying on a law-related occupation the lawyer almost inevitably will engage in the practice of law. "If the second occupation is so law-related that the work of a lawyer in such occupation will involve, inseparably, the practice of law, the lawyer is considered to be engaged in the practice of law while conducting that occupation." A.B.A. Op. 328.

Accordingly, although the practice of multiple professions is not prohibited, there are substantial limitations. While conducting a related occupation, the lawyer is subject to all requirements of the disciplinary rules. For example, the fee set by the lawyer must conform with DR 2-106, and advertising must be in accord with applicable standards. Disciplinary Rule 4-101 imposes the duty on the lawyer engaged in the collateral occupation to preserve the confidences and

secrets of his clients, although others engaged in that occupation may not have a similar duty. The lawyer may owe a duty as a fiduciary even though the relationship of others in that occupation is not that of a fiduciary. The lawyer in the collateral occupation would be obligated to comply with the limitations of DR 5-104 relating to the limitation of business relations with clients, even though others in that occupation would not have the same obligation. See, A.B.A. Formal Op. 328.

Thus, although the contemplated business activity is not absolutely barred, the operation of the business would be subject to all of the disciplinary rules. And, it appears, as a practical matter, the operation of the business would inevitably result in a violation of disciplinary rules.

DATED this 24th day of February, 1981.

*Cf., I.S.B. Opinion No. 109 (November 30, 1981).
See also, I.S.B. Opinions No. 88 (July, 1975), 56
(March 15, 1972), and 11 (February 11, 1959).