

FORMAL OPINION NO. 88\*

The Professional Ethics Committee has been asked to comment on certain ethical situations arising under DR 2-102(E) of the Code of Professional Responsibility. Specifically, the Committee has been asked to respond to the following questions:

1. Is it permissible for an attorney to have a separate telephone as a Certified Public Accountant?
2. Is it permissible for an attorney to have a separate bank account and letterhead which also lists him as a Certified Public Accountant?
3. Is it permissible for an attorney to have his Certified Public Accountant certificate hanging on his office wall?
4. Is it permissible for an attorney to sign audits or other documents which identify him only as a Certified Public Accountant?

DR 2-102(E) provides:

"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."

The history of the question of dual professional status is long and torturous as reflected in the opinions of the American Bar Association and various state bar associations. Under the Canons of Ethics, various rules were devised which, at times, conflicted in part and vacillated between total prohibition of dual professionalism and approbation. In Idaho, this was the subject of a lengthy opinion drafted in 1959. I.S.B. Opinion No. 11. At that time, the Idaho Ethics Committee stated in part as follows:

- "1. An attorney who is also qualified as a Certified Public Accountant may carry the designation "Certified Public Accountant" on his office door, his professional card, and on his letterhead; and may practice both professions from the same office, providing that he adheres to the professional standards applicable to attorneys at law with respect to advertising and solicitation.
- "2. An attorney who is qualified as a certified public accountant may properly represent a client in a dual capacity, using his knowledge and skill in both professions for the benefit of his client, but may charge for his services so rendered as an attorney only.
- "3. An attorney who is qualified as a specialist, by special training, desiring to limit his practice to such specialty, may properly cause his name to be listed in a directory available to the public, such as in the yellow pages of a telephone directory indicating that his practice is limited to a specialty, providing that such a listing is not used as a feeder to a law practice, and providing that he adheres to professional standards applicable to attorneys with respect to advertising and solicitation."

A dissent to the third paragraph of this opinion was noted by Calvin Dworshak.

In recent years the American Bar Association has published its Formal Opinion No. 328 which addresses itself to the dual professionalism of an attorney/certified public accountant in light of DR 2-102(E), Code of Professional Responsibility. There, the ABA was of the opinion that a lawyer can simultaneously hold himself out as a lawyer and as an accountant; that a lawyer could have separate letterheads for his accounting and legal professions and that the lawyer could practice two professions such as law and public accounting from one office.

The ABA Standing Committee on Ethics and Professional Responsibility noted that DR 2-102(E) inferentially recognizes the right of a lawyer to engage simultaneously in another business or profession and that a lawyer is not necessarily subject to discipline or sanctions for practicing law and accounting concurrently. The Committee also noted that while it would be improper to have one letterhead indicating that a person is both a lawyer and a C.P.A., separate letterheads would not be a violation of DR 2-102(E).

The Committee went on to note that there were no ethical problems identified 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). However, if the second profession or occupation is law-related, it becomes difficult to delineate whether the lawyer's work for another person is performed as a part of the practice of law or as a part of his other occupation or profession.

Where the two professions blur and become, in fact, indistinguishable and where the second occupation is law-related, then the lawyer is deemed to be in the practice of law while conducting that operation. Therefore, he would be subject to the standards of the Idaho State Bar while conducting that second occupation from his law offices. With that qualification, however, the lawyer may carry on a law-related occupation such as that of a C.P.A. from the same office.

However, as the ABA Committee points out the area is fraught with difficulties and qualifications. For example, the lawyer may have a duty under DR 4-101 to preserve confidences and secrets, or information, acquired in carrying on the second occupation even though others engaged in that occupation do not have a similar duty. By the same token, the lawyer may owe a duty as a fiduciary, in the practice of his second profession, even though the relationship of others in that occupation to their clients and customers is not that of a fiduciary. See, e.g., DR 5-101, DR 5-104, and DR 5-105.

The carrying on of a second occupation or profession from the attorney's law offices, therefore,

must be under the Code of Professional Responsibility, not only with regard to DR 2-102(E) but also with regard to the entire Code. The dual professional must, therefore, act cautiously and be alert to the realistic dangers of attempting to practice the other profession in a manner which will not violate the Code of Professional Responsibility.

The answers to the four questions posed above, then, are in the affirmative and the described conduct would not seem to be a violation of DR 2-102(E), subject to the qualifications noted above.

DATED July, 1975.

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\*DR 2-102(E) as quoted in this opinion has been deleted from the Code. The current applicable provision is DR 2-102. See, I.S.B. Opinion 109 (November 30, 1981) which overrules this opinion to the extent of any inconsistency. Cf., Opinion 103 (February 24, 1981). Note that Idaho does not recognize specialization at this time.