FORMAL OPINION NO. 11

ATTORNEY PUBLICIZING AS ACCOUNTANT,

TAX ATTORNEY OR TAX CONSULTANT

The committee has been requested to express its opinion with respect to the following questions:

1. Can an attorney, who is also qualified as a certified public accountant, ethically, in any manner, publicize his qualifications as a lawyer and accountant, as a tax attorney or otherwise call attention of the public to such qualifications?

2. Can a lawyer who is so qualified ethically represent a client in a dual capacity, as attorney and accountant?

In order to cover the situation on a broader basis the Committee adds a third question:

3. Can one so qualified ethically permit his name to be listed in a directory available to the public, such as the yellow pages of a telephone directory, indicating his several qualifications?

Advertising has long been a troublesome question in the profession, and has been the subject of, or involved in more opinions on ethics than any other one subject. No citation is needed to support the elementary statement that advertising is proscribed. The difficult question is to arrive at a determination of what constitutes advertising, and in defining the limitations under which a lawyer finds himself with respect to the definitions of the term.

Such questions have been the subject of opinions of many committees on ethics; and those opinions have not always coincided with each other, nor have they always been arrived at by unanimous vote of the various committees. In our consideration of these questions other varying opinions have been read and considered.

The views of the American Bar Association have been expressed in its Opinion No. 272 in discussing the status of a lawyer who was also a certified public accountant. Among other things, this committee said:

"The Committee all deem it in the interest of the profession and its clients that a lawyer should be precluded from holding himself out, even passively, as employable in another independent professional capacity. We find no provision in the Canons precluding a lawyer from being a C.P.A., or from using his knowledge and experience in accounting in his law practice.

"We are confident that a lawyer could not, as a practical matter, carry on an independent accounting business from his law office without violating Canon 27.

"The Committee all agree that a lawyer who is also a C.P.A. may perform what are primarily accounting services, as an incident to his law practice, without violating our Canons. We are also agreed that he may not properly hold himself out as practicing accounting at the same office as that in which he practices law, since this would constitute an advertisement of his services as an accountant which would violate Canon 27 as construed in our opinions."

The majority of the Committee further stated that they were of the opinion that a lawyer, holding himself out as such, might not also hold himself out as a certified public accountant and any office without violating Canon 27, because his accounting activities would inevitably serve as a feeder to his law practice. (Drinker, Legal Ethics, pp. 223, et seq.)

The Michigan Committee is quoted by Mr. Drinker as follows:

"There is, of course, nothing to prevent a lawyer from adding to his general qualifications by becoming a certified public accountant and using his skill in appropriate matters as they arise. It is only when the lawyer seeks to publicize the fact that he is also an accountant that the question arises."

Evidencing the fact that Committees on Ethics are not entirely in agreement on the matter, the New York City, and the New York County Committees both hold that a lawyer who is also a certified public accountant may not only practice both professions from the same office, but may carry the designation "Certified Public Accountant" on his door, and also, it would seem, on his letterhead and card, providing that he adheres to the professional standards applicable

to attorneys at law with respect to advertising and solicitation. (Drinker, Legal Ethics, p. 224.)

The ABA Committee, in the quotation hereinabove set out, touched upon the matter of one acting in the dual capacity of attorney and accountant. The Ohio Committee (Opinion No. 9) held, in effect, on this question, that a lawyer could not act and be compensated as an attorney and as a real estate broker, representing the client in a dual capacity, saying, "When an attorney acts in two capacities in the same transaction, there is nothing independent about his professional capacities. They are wrapped together in the one transaction." We understand from that opinion that one may not properly make a charge for services both as a lawyer, and as a broker. We do not understand that one may not act in both capacities and make a charge for his services as an attorney.

That the Canons prohibit advertising by an attorney, as a basic and primary principle of ethics cannot be disputed. It follows, therefore that publicizing one's qualifications as a tax consultant, or tax attorney, must also be considered unethical, if by publicizing it is meant to give notice to the public, to call attention to the individual as an attorney having special qualifications, or to distinguish one from his colleagues. In short, if the purpose of the publicizing is to attract business it is prohibited. It has been suggested however, that a listing in the yellow pages of a telephone directory under a heading of "Attorneys" that one listing himself as a Tax Attorney or consultant, might, in effect, be saying to the public, "I desire to limit my business to tax work." In considering the question before us we must look to the effect of such a listing, rather than to the intent of the individual who causes, or permits such a listing. Among other things to be considered in the deliberations on the problem, is the effect, if any, of the changes in the business and professional worlds in the past decade or two, the change of pace in our living, working, and the practice of our profession; upon the ideals of the public in general, and of the professions, and our own profession in particular; in the light of economic change and economic necessities. The first 32 Canons were adopted by the American Bar Association in August, 1908. While the principles of honesty, or of right and wrong, can not be said to have changed since that time, it can hardly be said that conditions affecting the practice of law have remained unchanged. We have come to an age of specialization. The increase of population, of production, of the growth of the body of law; practice before administrative bodies and agencies, governed by rules made by others than members of the legal profession; all have combined to force specialization, to some extent, in the profession. The medical profession, during the same time, has progressed to a greater extent,

it is believed, toward specialization; and it is interesting to note that the ethics of that profession permit the use of specialty designations in directories available to the public, and upon the professional cards and the office doors of its members, apparently without question as to the propriety of the practice.

The opinions of the New York City and New York County Committees, hereinbefore mentioned, do not indicate to what extent the matters herein mentioned may have influenced those opinions, or whether such considerations had any part in those opinions. This committee, having carefully considered all facets of the problem, and still being of the opinion that advertising is not, and can not be condoned, leans toward the view of the New York Committees as to what constitutes advertising; and with reference to the questions set out in the opening paragraph of this opinion expresses its opinion on those questions 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.

An attorney who is qualified as a specialist, not desiring to limit his practice to the specialty, may not with propriety cause his name to be listed in a directory available to the public in such a manner as to indicate his specialty, or in any manner to distinguish him from others listed under the heading of attorney at law, for to do so would constitute a violation of Canon 27, and would constitute advertising and solicitation.

DATED this 11th day of February, 1959.

DISSENT

I concur in the conclusions reached with regard to the first and second questions presented in the foregoing opinion. However, I do not concur in the answer to the third question for the reason that, in my opinion, conclusion of the majority opens the door to advertising of many and varied forms by lawyers who consider themselves as specialists or as having had special training.

The proper time for an attorney to advise a prospective client that his practice is limited to a specialty is not in a directory available to the public, but, rather when the prospective client contacts the attorney.

I do not feel the legal profession can be likened to the medical profession in connection with advertising of specialties. A medical practitioner is subject to disciplinary proceedings if he handles cases outside of his specialization, as I understand it. This is not true with regard to our own profession.

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*This opinion was recently reaffirmed in I.S.B. Opinion 109 (November 30, 1981). See also, I.S.B. Opinion 103 (February 24, 1981) relating to the practice of dual professions from the same office. Idaho does not recognize specialities except as provided by DR 2-105, Idaho Code of Professional Responsibility.