

ADVISORY ETHICS OPINION 81-09

SYNOPSIS:

An attorney may carry on the practice of law while also acting as a real estate broker, as long as he/she observes the restraints on dual professions delineated in DR 2-102(E).

QUESTION PRESENTED:

What are the ethical parameters of the practice of law when an established attorney, who is also licensed as a real estate broker, desires to associate himself with an established real estate office and actively engage in both professions? Both the real estate office and the office of the attorney are in the same building.

DISCUSSION:

While the Vermont Committee on Professional Responsibility has not considered precisely the question of maintaining simultaneously a real estate business and law practice, the propriety of dual professions was addressed in opinion 79-16.

Although the factual situation concerned an attorney who was also a licensed agent for the sale of title insurance, the analysis is appropriate. The opinion cites DR 2-102(E) which 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, not shall he identify himself as a lawyer in any publication in connection with his other profession or business.

Plainly the sale of real estate is another business from the practice of law and the admonitions of DR 2-102(E) apply.

The problem area would be in any attorney-client relationship between the two parties after the attorney-sales person has acted in either one capacity or the other.

ABA Informal Opinion 775 (19650 addresses the exact question raised here; the only difference being that the attorney's law practice was located in a large urban area. The ABA Committee cautiously decided that it is not necessarily a violation of the Canons for a practicing lawyer to engage in such a business activity:

- (1) If a separate business is clearly not necessarily the practice of law when conducted by a lawyer, and
- (2) If it can be conducted in accordance with and so as not to violate the Canons, and
- (3) If it is not used or engaged in such a manner as to directly or indirectly advertise or solicit legal matters for the lawyer, and
- (4) If it will not "inevitably serve" as a feeder to his law practice, and
- (5) It is not conducted in or from a lawyer's law office, except in cases where the volume of the law practice and businesses is so small that separate quarters for either is not economically feasible and where, even in such cases, there is no indication on the shingle, office, door, letterhead or otherwise that the lawyer engages in any activity therein except the practice of law, it is not necessarily a violation of the Canons for a practicing lawyer to engage in such a business activity.

They further concluded that one could never act as an attorney regarding a transaction initiated while acting as a broker and that the attorney should hesitate before acting as a lawyer for any parties first met while being a real estate broker.

While this latter warning may have been obviated in the intervening liberalization of DR 2-102 situations, our Committee Opinion 79-16 allows that even if there appears to be "no general prohibition against a lawyer's having outside business interest" most certainly "there are some particular strictures which need to be observed with care."

These would include careful adherence to the directive of DR 2-102(E) which prohibit an attorney engaged in two professions or business from so indicating on his/her letterhead, office sign or professional card and further forbidding his/her identification as an attorney in any publication connected with the other profession or business.