

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-74
Issued: November 1973

This opinion was decided under the Code of Professional Responsibility, which was in effect from 1971 to 1990. Lawyers should consult the current version of the Rules of Professional Conduct and Comments, SCR 3.130 (available at <http://www.kybar.org>), especially Rules 7.01-7.50 and the Attorneys' Advertising Commission Regulations, before relying on this opinion.

Question: May an attorney engage in both the practice law and the operation of a real estate business?

Answer: Yes.

References: DR 2-101, DR 3-102, DR 3-103

OPINION

The Ethics Committee has received an inquiry from an attorney concerning the propriety of engaging in both the practice of law and the operation of a real estate business. Assuming such dual activity to be permissible, he also requests guidance from the Committee in defining those situations in which it may be undertaken.

This is a difficult question and one that has not previously been considered by the Committee. In general, it is not improper for an attorney to engage in a separate business or profession, provided that in doing so he does not violate the Canons of legal ethics. In making that determination, several criteria have been developed over the years. ABA Informal Opinion 775 (dated February 15, 1965) states that an attorney does not necessarily violate the Canons by engaging in a separate occupation (1) if the separate business is not necessarily the practice of law when conducted by a lawyer, (2) if it can be conducted in accordance with the Canons; (3) if it is not used or engaged in such a manner as directly or indirectly to advertise or solicit legal matters for the lawyer, (4) if it will not "inevitably serve" as a feeder to his practice; and (5) if it is not conducted in or from a lawyer's law office, except where the volume of the law practice and business is so small that separate quarters are not economically feasible and where, even in that situation, there is no indication on the office, letterhead or otherwise that the lawyer engages in any activity except the practice of law. Applying these criteria, the ABA Committee on Professional Ethics concluded that a practicing attorney would not necessarily violate the Canons if he also engaged in the business of a real estate broker.

After careful consideration we are persuaded that this correctly states the rule. At the same time, we recognize and fully subscribe to the numerous limitations expressed in that opinion. If the real estate business engages in advertising of any kind, it may not under any circumstances be conducted in or adjacent to the attorney's office. To do so

would necessarily involve a direct violation of the prohibition in DR 2-101 against advertising. For the same reason, a real estate business may not be conducted in the attorney's name if it advertises and solicits real estate business. Moreover, Informal Opinion 775 observes that since the real estate business is so closely related to the practice of law, it would be unethical for a lawyer to divide real estate commissions earned as a result of his efforts with a non-lawyer or to engage in the real estate business with a non-lawyer. The basis for these conclusions is found in DR 3-102, which forbids the dividing of legal fees with a non-lawyer, and DR 3-103, which expressly prohibits formation of a partnership by a lawyer with a non-lawyer if any of the activities of the partnership consist of the practice of law. Finally, it is evident that an attorney may not, under any circumstances, act as attorney in connection with a transaction initiated by him as broker, since that would on its face involve use of the business as a feeder to his practice.

In reaching our conclusion, we are mindful of the many problems an attorney will encounter if he attempts to engage concurrently in both his profession and the real estate business. His conduct will be under constant scrutiny by lawyers and public alike, and he must be constantly prepared to defend his acts. Under such circumstances we agree with the observation in ABA Informal Opinion 775 that few lawyers will expose themselves to the suspicions that will inevitably arise.

Note to Reader

This ethics opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530 (or its predecessor rule). The Rule provides that formal opinions are advisory only.