Practical and Ethical Issues for Attorneys Practicing Dual Occupations

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Complying with the **California Rules of Professional Conduct** can be challenging enough for an attorney, but issues can become even more complicated if you are also practicing a dual profession. Engaging in a second occupation may appeal to some attorneys (especially solo practitioners who may enjoy more flexibility in their practice) as they can draw on their legal experience in performing such service, diversify their revenue stream, or sow long-lost creative oats. But lawyers must always consider the practical and ethical challenges involved with actively practicing dual occupations.

Subject to certain restrictions, California state ethics rules generally permit California attorneys to engage in the practice of law and a second occupation. This issue has been addressed by the state bar's Standing Committee on Professional Responsibility and Conduct in several opinions.[1] Engaging in dual professions may carry traps for the unwary lawyer, however, as such conduct may conflict with a lawyer's duties of confidentiality, loyalty, and/or violate the Rules of Professional Conduct, which govern an attorney's actions at all times.

Providing non-legal services to a client is considered a business transaction, but one that creates actual and

potential conflicts of interest. A client for whom a lawyer provides non-legal services is nonetheless considered a legal client with respect to the applicability of the Rules of Professional Conduct. Therefore, prior to entering into any such transaction, the attorney must determine all actual and potential conflicts, and if such conflicts are waivable. If so, the attorney must disclose the conflicts and risks and obtain written client informed consent and waiver. If not, the attorney must forego the deal.

Conflicts present even greater risk where attorneys perform "law-related" occupations, such as real estate brokerage or financial services to non-legal clients. In those situations, the lawyer is bound by the Rules of Professional Conduct as well as the rules and regulations governing the second occupation, and is responsible for reconciling the two. This can be challenging and potentially impossible where, for example, a lawyer providing real estate brokerage services must reconcile his or her duty to keep all information relating to the representation of a client confidential with the robust disclosure obligations imposed on brokers by the Bureau of Real Estate regulations.

An attorney must continue to comply with the Rules, even in promoting their second occupation. Advertising for the provision of non-legal services that imply clients will benefit from the attorney's legal expertise is governed by the Rules of Professional Conduct and must conform to all rules governing lawyer advertising. Further, lawyers must be careful to not use their side occupation as a way to solicit legal clients in a manner that may violate the rules prohibiting in-person solicitation.

Finally, in structuring partnership or other shared business arrangements for non-legal deals, lawyers must be sure they maintain full control over their legal practice, and avoid any sharing of legal fees.

Footnote

1. California State Bar Formal Opinion Numbers 1982-69, 1995-141 and 1999-154.

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