Committee Opinion
February 1, 1990

LEGAL ETHICS OPINION 1318

DUAL BUSINESS – CONFLICT OF INTERESTS – TRUST ACCOUNTS: ATTORNEY/CONSULTANT OFFERING BOTH SERVICES TO CLIENT BUT CHARGING ONE RETAINER FEE AND ACCEPTING A SINGLE CHECK FOR BOTH SERVICES.

You have advised that you wholly own and operate a consulting firm that is separately organized from your law practice and is a distinct entity known by a different name. Although both are operated out of the same office space, you indicate that everything pertaining to the two operations is kept separate including different telephone numbers, letterhead, business cards, envelopes, financial and tax records, and bank accounts.

You have asked the Committee to review the propriety of combining fees for both legal and consulting services into a fixed retainer fee, if such total amount is broken down into "Legal Services" and "Management/Professional Services" but if the client writes one check to the law firm which then pays the consulting firm as a wholly-owned subsidiary or sub-contractor. You have further inquired if any difference would occur if the bill was sent on law firm letterhead alone, or on a combination of law firm letterhead and consulting firm letterhead with the different services specified on each but, again, one check written to the law firm.

The appropriate and controlling disciplinary rules relative to the issue you have raised are DR:5-101(A) which precludes an attorney from accepting employment if the exercise of his professional judgment on behalf of his client may be affected by his own financial, business, property or personal interests, except with the consent of his client after full and adequate disclosure under the circumstances; DR:5-104(A) which prohibits a lawyer from entering into a business transaction with a client if they have differing interests and if the client expects the lawyer to exercise his professional judgment therein for the protection of the client, unless the client has consented and provided that the transaction was not unconscionable, unfair or inequitable when made; and DR:9-102 which requires a lawyer or law firm to preserve the identity of funds and property of a client.

The Committee has consistently opined that a lawyer's activities which simultaneously constitute the practice of law and related entrepreneurial endeavors are not proscribed by DR:5-101(A) provided that the requisite consent of the client is obtained. (See generally, LE Op. 1083) Under that principle, the Committee has recognized the propriety of attorneys having an interest in or providing billing services (LE Op. 1016), accounting and auditing services (LE Op. 1163), court reporting services (LE Op. 1198), bail bond services (LE Op. 1254), and the sale of insurance products (LE Op. 1311).

In addressing the issue of lawyers conducting ancillary business activities, the Committee has similarly opined that, with the requisite consent of the clients whose interests may differ from the attorney's personal interests, such activities would not be violative of DR:5-104(A). (See LE Op. 1254)

For purposes of this opinion, the Committee assumes that although your law firm receives one check from a client who utilizes both services, you are, in fact, charging separate legal and consulting retainer fees and not one single fixed retainer fee to cover the charges for both services. It is the opinion of the committee that in order to avoid any impropriety in conducting the dual practice, you must first disclose to the client the specific amount of each (legal and consulting) retainer fee. Having first disclosed that information to the client and having received the client's agreement, all monies received in a single check for legal and consulting services rendered must then be handled in accordance with the requirements of DR:9-102, including that the funds must be "deposited in one or more identifiable bank accounts maintained in the state in which the law office is situated [with] no funds belonging to the lawyer or law firm . . . deposited therein . . . ." The Committee is further of the opinion that, to avoid commingling of funds belonging to the lawyer with client funds, the amount due the consulting practice must be disbursed in a timely fashion. (See LE Op. 1262, LE Op. 1263) Finally, the Committee opines that full disclosure regarding the application of each portion of the joint check to each separate practice must be made to the client prior to any disbursements being made to the lawyer's operating account or to the consulting firm's account, and an accounting to the client must be made following each such payment.