The Dual Practitioner—DR 2-102(E)

Lawyer John Doe is also a certified public accountant. He pursues both occupations from the same suite of offices. His shingle “John Doe, attorney at law and certified public accountant,” hangs above the entrance to his office. The two businesses share the same reception hall and receptionist. Doe employs two secretaries; one handles accounting matters while the other is a legal secretary. As an accountant, Doe often refers himself to handle legal matters; as an attorney he often suggests to clients that he handle their accounting work. Usually, he says nothing and the client requests that he handle work in both areas. His professional cards read “John Doe, attorney at law and certified public accountant,” as does his stationery. He recently published an article in an accounting journal in which he identified himself as an accountant and a lawyer.

Disciplinary Rule 2-102(E) of the American Bar Association Code of Professional Responsibility requires “A lawyer who is engaged in both the practice of law and another profession or business shall not so indicate on his letterhead, office sign or professional card, nor shall he identify himself as a lawyer in any publication in connection with his other profession or business.” DR 2-102(E) by implication recognizes the right of an attorney to simultaneously participate in the practice of law and another profession or business; it does, however, interdict certain activities by the attorney who is a dual practitioner.²

Background of DR 2-102(E)

The policies which underlie DR 2-102(E) have their origins primarily in Canon 27 of the ABA’s Canons of Professional Ethics³ which prohibited the solicitation of business by direct advertising

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1. ABA CODE OF PROFESSIONAL RESPONSIBILITY [hereinafter cited as ABA Code], Disciplinary Rule [hereinafter cited as DR] 2-102(E).
2. ABA COMMITTEE ON PROFESSIONAL ETHICS, OPINIONS [hereinafter cited as ABA Opinions], No. 328 (1972).
3. Id.; see H. DRINKER, LEGAL ETHICS [hereinafter cited as DRINKER], 215-220 (1953).
and other methods. The original Canon 27 on solicitation and advertising did not expressly forbid an attorney from engaging in a business other than the practice of law. Several of the cases and opinions interpreting Canon 27 did, however, call into question the propriety of simultaneously participating in the practice of law and certain other professions and businesses.

In the case of In re L.R., the New Jersey Supreme Court suspended an attorney from the practice of law for a period of one month for participating with the real estate company he controlled in offering a “one package deal” to prospective customers, including processing by the real estate company’s legal department of mortgages and closings. Furthermore, the attorney had consented to a news article regarding the real estate company which praised the accomplishments of the attorney in this area and included his photograph. The court concluded that the attorney had violated Canon 27 and that the one package system “whereby commercial services, including a lawyer’s fee, are rendered to a person for a

4. ABA Canons of Professional Ethics No. 27. Prior to the adoption of the ABA Code, Canon 27 read in pertinent part:

27. Advertising, Direct or Indirect. It is unprofessional to solicit professional employment by circulars, advertisements, through touters or by personal communications or interviews not warranted by personal relations. Indirect advertisements for professional employment such as furnishing or inspiring newspaper comments, or procuring his photograph to be published in connection with cases in which the lawyer has been or is engaged or concerning the manner of their conduct, the magnitude of the interest involved, the importance of the lawyer’s position and all other like self-laudation, offend the traditions and lower the tone of our profession and are reprehensible; but the customary use of simple professional cards is not improper.

It is not improper for a lawyer who is admitted to practice as a proctor in admiralty to use that designation on his letterhead or shingle or for a lawyer who has complied with the statutory requirements of admission to practice before the patent office to use the designation “patent attorney” or “patent lawyer” or “trade-mark attorney” or “trade-mark lawyer” or any combination of those terms.

5. ABA Opinions, No. 328, supra note 2.

6. Id. Several of the Ethics Opinions considered in this comment are interpretations of Canon 27 rather than DR 2-102(E). The attorney must understand the rationale behind these early decisions in order to better grasp the directives of DR 2-102(E).

7. 7 N.J. 390, 81 A.2d 725 (1951).

8. Id. at 391, 81 A.2d at 726.
single charge” was unethical.9

The ABA Committee on Professional Ethics condemned the actions of an attorney who, in addition to his general law practice, ran an investigation and adjustment bureau which solicited business from insurance companies.10 The Committee stated that while it was not per se unethical for an attorney to participate in another business, great care must be taken by the attorney when the second business requires activities by the attorney which are “inconsistent with the lawyer’s duties as a member of the Bar.”11 If the second occupation is one in which the natural result would be to feed clients into the lawyer’s existing law practice or would easily lend itself to indirect solicitation of business for the law practice, then it must be kept wholly separate from the lawyer’s practice. It would be extremely difficult for the attorney to participate in claims adjustment without practicing law and performing duties in which his skills and learning as an attorney would not be engaged.12 The Committee concluded that “[t]he adjustment of insurance claims by a lawyer is professional employment,” and hence is in violation of Canon 27.13

Indirect Solicitation and the Feeder Argument

In Opinion 57, two of the basic arguments against an attorney participating in both the practice of law and another profession have one of their earliest enunciations. If the second occupation is one which will serve as a feeder to the attorney’s law practice or is one which results in indirect solicitation of clients, then it must be maintained “physically and functionally separate from the law practice.”14

Several other opinions and cases have elaborated on the application of the indirect solicitation and feeder standards. The strongest statement on the feeder argument is found in ABA Opinion No.

9. Id.
10. ABA Opinions, No. 57 (1932).
11. Id.
12. Id.; DRINKER at 221-23.
13. Note 10, supra.
In this opinion it was stated that a lawyer could not hold himself out as being qualified to engage in both the practice of law and of accounting, as the practice of accounting would, of necessity, include self-touting and "almost inevitably serve as a feeder to the legal firm." If the attorney decides to practice accounting then "he must not practice law or he will violate Canon 27 in that he will be using his activity as an accountant to feed his law practice."

Opinion 297 was generally seen by attorneys who practiced both law and accounting as a severe restriction of their professional freedom. These dual practitioners could not be heard to say, however, that Opinion 297 had caught them off-guard, for as early as 1946, the ABA Committee on Professional Ethics had clearly stated that an attorney could not pursue the practice of accounting along with his law practice whether this was done from the same or separate offices.

Strong criticism was nonetheless raised over the use of the feeder standard in determining the propriety of dual professionalism. It was claimed that the feeder standard would result in banning all the lawyer's activities outside his law practice, and that feeding was an unavoidable result of an attorney having two occupations. Critics argued that feeding was present in everything an attorney did, be it personal or professional, and therefore, to condemn feeding a law practice was a result of a failure to see things as they actually existed.

The second major argument against an attorney engaging in two professions simultaneously was the claim that the second business would result in indirect solicitation of law practice in violation

16. Id.
17. Id.
20. Goldberg, supra note 18, at 126-127.
of Canon 27. In the case of In re Miller, Theodore Miller, an attorney, was charged with using his trademark search service to solicit clients for his law practice. The court concluded that the evidence was overwhelming that the trademark service was a business "which, if handled by a lawyer, would be regarded as the practice of law." The court also noted that the trademark service occasionally referred clients to Miller and in a few instances Miller had suggested himself to clients of the trademark service. Through the trademark business Miller had indirectly solicited clients for his law practice; he was suspended for one year.

The case of In re Rothman involved a mortgage company and a law partnership that were controlled by the same two attorneys. The New Jersey court stated:

The mortgage company's big selling point in its highly competitive business is the tie-up with the law firm, as a result of which more efficient service is offered to the customer. The law partnership allows the mortgage company to use this selling point, and as a result its own business is greatly increased.

The mortgage company served as an indirect method for the lawyers to solicit business for their law practice in violation of Canon 27. Rothman was given a severe reprimand by the court.

The Committee on Professional Ethics of the Association of the Bar of the City of New York said that it would be improper for a lawyer to "engage in business . . . under circumstances that the business is used as a means of solicitation or where the aspects of the business are so similar to the practice of law . . . the public is likely to be confused." The committee also rejected a proposal by an attorney to distribute an announcement stating that he was now in the insurance business, but that he was continuing in the practice of law as well. While the committee did not elaborate on

22. DRINKER at 222 (quoting ABA OPINIONS No. 57, supra note 10).
23. 7 Ill.2d 443, 131 N.E.2d 91 (1955).
24. Id.
25. 131 N.E.2d at 97.
26. Id.
27. 12 N.J. 528, 97 A.2d 621 (1953).
28. 97 A.2d at 638.
29. Id.
30. NY CITY OPINIONS, No. 489 (1939).
the reasoning behind this decision, it can be seen that both the indirect solicitation and the feeder arguments could apply equally to this question.

Due perhaps to the application of the feeder and indirect solicitation arguments, some second professions were allowed, while others were condemned. A lawyer could properly hold a financial interest in a collection agency, so long as he did not include his name on the stationery or advertisements or otherwise give the indication that the company enjoyed the benefit of the lawyer's counsel. It was not improper for an attorney to be an officer and director of a bank where his legal skills were not required. On the other hand, the ABA Committee repeatedly condemned the dual practice of law and accounting. Other dual professions which were condemned included the practice of law and selling life insurance, the practice of law and selling stocks and securities, and the practice of law and marriage counseling. While under some conditions it was not improper to engage in the practice of law and real estate, the practice of law could not be joined with the operation of a mortgage corporation.

Prior to the adoption of the Code of Professional Responsibility, the ABA position on dual practice was that a dual profession was not improper:

(1) If [the] 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 in such a manner as to directly or indirectly advertise or solicit legal matters for the lawyer as a 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,

32. ABA Opinions, No. 225 (1941).
34. ABA Opinions, No. 57, supra note 10; ABA Opinions, No. 272, supra note 19; ABA Opinions, No. 297, supra note 15; Informal Opinions, No. 506 (1962); Informal Opinions, No. 565 (1962).
39. In re Rothman, supra note 27.
except in cases where the volume of the law practice and business 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.\(^\text{40}\)

**DR 2-102(E) and the Rejection of Indirect Solicitation and Feeder Standards**

In adopting DR 2-102(E) the ABA has abandoned the indirect solicitation and feeder standards in favor of specific rules of conduct which will be imposed on the dual practitioner.\(^\text{41}\) Activities of an attorney who is engaged in the practice of law and another profession or business must fall within one of the specific prohibitions of the ABA Code in order to merit disciplinary proceedings.\(^\text{42}\) The Committee apparently hoped that, in this manner, more predictability and greater certainty as to ethical questions regarding dual practice could be gained.

ABA Formal Opinion No. 328 stated a lawyer could practice both accounting and law from one office as long as DR 2-102(E) was not violated.\(^\text{43}\) So long as the accountant/lawyer does not indicate that he is engaged in a dual practice on his “letterhead, office sign or professional card” and so long as he does not indicate that he is an attorney in any publication in connection with his accounting business, the mandates of DR 2-102(E) will be satisfied."\(^\text{44}\) Opinion 328 reverses the ABA position stated in Opinion 297 by concluding that a lawyer may engage in both the practice of law and accounting, an activity which had been condemned by Opinion 297. The opinion states:

> Inferentially DR 2-102(E) recognizes the right of a lawyer to engage at the same time in another business or professions,

\(^\text{40. Informal Opinions, No. 775 (1965).}\)

\(^\text{41. ABA Opinions, No. 328, supra note 2. Several other Disciplinary Rules impact on the attorney who is engaged in two professions. Disciplinary Rules other than DR 2-102(E) are outside the scope of this comment and will be treated only briefly herein. See DR 1-201 through DR 2-105 for other rules pertaining to dual practice.}\)

\(^\text{42. Id.}\)

\(^\text{43. Id.}\)

\(^\text{44. Id.; DR 2-102(E).}\)
and under the code it is clear that a lawyer is not necessarily subject to discipline for practicing law and accounting concurrently. The answer . . . is that the lawyer may simultaneously hold himself out as a lawyer and as an accountant provided the requirements of DR 2-102(E) are met.46

It must be recognized, however, that any time an attorney pursues a second occupation the opportunities to violate some other Disciplinary Rule other than DR 2-102(E) are greatly increased.46 This is especially so where the second calling is closely related to the practice of law.47 An attorney may, however, engage in even a law related second occupation at the same time and from the same location of his law practice so long as “he complies not merely with DR 2-102(E) but with all provisions of the Code of Professional Responsibility.”48

The restrictions of the Code govern the dual practitioner. No longer must the attorney engaged in another business attempt to guage his conduct under the difficult standards of indirect solicitation and feeding his law practice; he must merely comply with all the restrictions imposed by the Code.49 In order to comply with DR 2-102(E), the attorney must use separate letterheads, cards, office signs and the like and he must refrain from referring to himself, or allowing others to identify him as an attorney in any publication related to his second occupation.50 If he does this DR 2-102(E) is satisfied, and if he fulfills all the other requirements of the Code, he may engage in any second occupation simultaneously with his law practice and even pursue the second occupation from

45. ABA OPINIONS, No. 328, supra note 2.
46. Id.
47. Id.
48. Id. The Committee emphasized this by a set of illustrations, saying: . . . fees set by a lawyer purporting to carry on, from his law office, a mortgage brokerage or loan brokerage must conform with DR 2-106. Publicity given to the second occupation and methods of seeking business must be in accord with DR 2-101, DR 2-103 and DR 2-104. The lawyer may have a duty under DR 4-101 to preserve confidences and secrets, or information, acquired in carrying on the second occupation even though others engaged in that occupation do not have a similar duty. [T]he lawyer may . . . owe a duty as a fiduciary even though the relationship of others in that occupation to their clients and customers is not that of a fiduciary.
49. Id.
50. ABA CODE, DR 2-102(E).
In Informal Opinion No. 1196, the ABA Committee on Professional Ethics said that DR 2-102(E) was violated where a lawyer indicated on his letterhead that he was both an attorney and a part-time municipal judge. The opinion stated "We interpret 'municipal judge' as being included within 'another profession or business';" therefore the letterhead did not meet the requirements of DR 2-102(E). The Committee noted that in addition to violating DR 2-102(E), the attorney had also violated DR 2-102(A). The same result would have been reached under Canon 27 of the Canons of Professional Ethics. Two earlier ethics opinions interpreting Canon 27 stated that it would be improper for a lawyer to indicate that he had been a judge, as this would constitute self-touting.

ABA Informal Opinion No. 1248 addressed the problem of an attorney who was also a psychologist and was actively engaged in marriage counseling at the same time as his practice of law. The attorney had a law office in town 1 and he lived in town 2. The marriage counseling took place primarily at an office in his residence in town 2, but the office directory at his law office in town 1 listed his name and included the information "Attorney and Marriage Counselor." The telephone directory listed him under "Attorneys" and included the number of his counseling office as a number to call if there was no answer at his law office. The opinion

51. ABA Opinions, No. 328, supra note 2.
53. Id.
54. Id.
55. Id. DR 2-102(A) reads in pertinent part:
A lawyer of law firm shall not use or participate in the use of professional cards, professional announcement cards, office signs, letterheads, telephone directory listings, law lists, legal directory listings or similar professional notices or devices except that the following may be used if they are in dignified form:

(4) A letterhead of a lawyer identifying him by name and as a lawyer, and giving his addresses, telephone numbers, the name of his law firm, associates and any information permitted under DR 2-105. (DR 2-105 deals with limitations of practice).
56. Informal Opinions, No. 1196, supra note 53.
It is not per se improper for a lawyer simultaneously to hold himself out as a lawyer and as a psychologist or as a marriage counselor . . . . [b]ut the office sign of the law office may not show that the lawyer is also a psychologist or a marriage counselor [without violating DR 2-102(E)].

This would be true only if marriage counseling was interpreted to be "another profession or business." Even if marriage counseling was determined not to be included within "another profession or business," signs, letterheads and cards indicating one to be both a lawyer and a marriage counselor would still violate other provisions of the Code. All of the provisions of the Code would apply to a lawyer who was also a marriage counselor, said the Committee, for: "Marriage counseling by one trained as a lawyer is so closely related to law that a lawyer-psychologist engaging in law practice and also in marriage counseling from his one office would be considered to be practicing law while engaged in such counseling . . . ." Further, under DR 2-102(E), any card, sign, letter head or publicity of the marriage counselor or psychologist could not identify the marriage counselor as also being an attorney.

ABA Informal Opinion No. 1316 dealt with an advertisement an attorney/pharmacologist proposed to run in the ABA Journal. The proposed ad read:

"John Doe, Ph.D., J.D., Pharmacologist—'74 Law School graduate; drug research/teaching experience at Medical Schools; expert witness/consultant, available for medical consultation in civil and criminal matters. Write, Box, City, State, Phone."

In a rather brief opinion the Committee simply stated that under DR 2-102(E), "any advertisement by a lawyer for a non-legal service wherein he is identified as a lawyer would be improper . . . ."
In the case of *Florida Bar v. Kaufman*, the Supreme Court of Florida placed an attorney on probation for a period of two years for violating DR 2-102(E) and certain other unethical conduct. The evidence showed that the attorney was also a licensed real estate broker in the State of Florida, and that he maintained his law office and his real estate office at the same location. A sign at the offices indicated that such location was both the law office and real estate office of the attorney; this, said the court, violated DR 2-102(E). The attorney was instructed to pass the ethics portion of the Florida Bar Examination during the term of his probation.

The Professional Ethics Committee of the State Bar of Florida has developed a set of opinions attempting to clarify the restrictions imposed upon the dual practitioner. Recently, the staff counsel of the Florida Bar gave an overview of these restrictions. Attorneys who are engaged in a dual practice must “avoid representations in one of their professions . . . that would produce clients for their other profession,” but it is not improper for an attorney to actively engage in a second occupation as long as the second occupation is “kept physically and functionally separate.”

An attorney who also wrote newspaper articles could not refer to himself as an attorney. An attorney could not use his legal stationery to inform others that he was engaging in a second occupation in addition to his law practice. It was improper for a lawyer to participate as a real estate broker and as a lawyer in the same

67. 347 So. 2d 430 (Fla. 1977).
68. Id. at 431.
69. Id.
70. Id. Due to the other violations of the Code and violations of the Integration Rule of the Florida Bar, it is impossible to determine what discipline the court felt was merited by a violation of DR 2-102(E) standing alone.
71. Id.
72. See Dual Professions, supra note 14.
73. Id.
74. Id.
75. Id. (quoting from Florida Advisory Opinion 73-18 (1973)).
76. Id.; see Florida Advisory Opinion 75-16 (1975) and Florida Advisory Opinion 75-37 (1975). An exception to this restriction is available when the articles deal with legal topics in which case the attorney may refer to himself as a lawyer “to give credibility to himself or his opinions”.
77. Id. See Florida Advisory Opinion 74-29 (1974).
real estate transaction. A lawyer who participated in television commercials for a bank could not identify himself therein as an attorney. The main danger in pursuing two callings, said the staff counsel of the Florida Bar, is that one profession would "foster" and serve "as a feeder" to the other.

The New York State Bar Association has also issued several opinions interpreting DR 2-102(E). In Opinion No. 135, it was held that an attorney who advertised a real estate office which he controlled could not identify himself as a lawyer. It was proper for an attorney to operate a title abstract service corporation as long as the mandates of DR 2-102(E) were fulfilled, and while a separate office for the title company was not necessarily required, "if the abstract company should advertise or solicit business from the public, then ethical considerations would require the maintenance of such operation in a separate office." A lawyer could not write letters to doctors advertising a "financial tax and legal information service," listing himself as "general counsel" and giving his opinion on the needs for such a publication. A lawyer who was an employee of an attorney placement organization could show his earned degrees on his business card, provided he did not engage in the practice of law. An attorney's professional card or letterhead could not indicate that he was a member of the legislature, that he was a judge or former justice of the peace, that he was "formerly counsel in any capacity to any federal, state or municipal body or organization," or that he was also a doctor, C.P.A. or engineer. An attorney could provide a "consumer counseling ser-

78. Id. See Florida Advisory Opinion 66-16 (1966).
80. Id. Even though expressly rejected by ABA Opinion No. 328, some State Bar Associations are still using the feeder standard to determine the propriety of a dual practitioner's conduct under the Code of Professional Responsibility. See Florida Advisory Opinion 77-20 (1977).
86. Id.
87. Id.
88. Id.
vice” as long as the Code requirements were fulfilled. A lawyer could not “act as both a lawyer and broker for a client . . . in the same transaction.” A planning consultant who was also an attorney could not call attention to his legal training if he was also engaged in active law practice.

In Opinion No. 206, the New York State Bar Association Committee gave a review of the limits imposed on the dual practitioner in that state. The Committee said:

The fundamental principle behind [DR 2-102(E)] is to protect the public and the profession against improper solicitation, advertising or commercialization, and to keep the other occupation from being used as a cloak for improper solicitation or from being deliberately used as a direct or indirect feeder of legal work.

If the [second] business is one in which advertising and promotion are permitted, no material used in connection with the [second] business may disclose the fact that a participant is a lawyer, and the business should be conducted on premises sufficiently separate from . . . the law practice to avoid having the clients or customers of the business gain the impression that the two are related . . . the lawyer should not accept as a legal client for matters originating through the other occupation, a person whose initial contact with him as a client or customer of such other occupation, unless the lawyer-client relationship clearly developed entirely on the initiative of the client without solicitation on the part of the lawyer and was not dependent upon the lawyer’s participation in the other occupation.

With strict adherence to the Code, it would then be proper for an attorney to pursue a dual practice from the same office.

90. NY St. Bar Opinions, No. 208 (1971).
93. Id.; see note 83 supra.
94. Id.
95. Id.
DR 2-102(E) and the Impact of Bates v. State Bar of Arizona\textsuperscript{96}

In 1977, after the United States Supreme Court rendered its now famous lawyer advertising decision in Bates v. State Bar of Arizona,\textsuperscript{97} the ABA attempted to bring the Disciplinary Rules of the Code in line with the new directives of that decision.\textsuperscript{98} Two proposals were presented to the House of Delegates of the ABA. The proposal adopted (proposal A) did not alter DR 2-102(E); proposal B, on the other hand eliminated this Disciplinary Rule.\textsuperscript{99} However, in Informal Opinion 1422, the ABA Committee stated:

The retention of DR 2-102(E) in the ABA Code may be the result of oversight. It appears to this Committee that its proscription is plainly inconsistent with the tenor of DR 2-101, as amended. DR 2-101 expressly permits a lawyer to publicize in certain media considerably more information about himself and his practice than that which remains forbidden by DR 2-102(E).\textsuperscript{100}

The Committee concluded that “DR 2-102(E) should be deleted from the ABA Code, and the Committee will so recommend.”\textsuperscript{101}

In light of Informal Opinion No. 1422, DR 2-102(E) is no longer a viable standard under the ABA Code.\textsuperscript{102} A lawyer’s conduct is, however, governed by the Code of Professional Responsibility “as adopted and interpreted” by the state bar association in which the attorney holds membership.\textsuperscript{103} Therefore, even though DR 2-102(E) may no longer be a viable part of the ABA Code, it remains in effect in all the states which have not removed it from their state versions of the Code. An attorney who remains subject

\textsuperscript{96} 433 U.S. 350 (1977).
\textsuperscript{97} Id. [hereinafter cited as Bates].
\textsuperscript{98} INFORMAL OPINIONS, No. 1422, supra note 14.
\textsuperscript{99} Id.
\textsuperscript{100} Id. The Committee reasoned that:

\ldots DR 2-102(E) was drafted thoughtfully, widely considered, and adopted by the House of Delegates without change (or footnote comment) for inclusion in the Model Code of Professional Responsibility. Its proscription was clear and unambiguous and it was adopted at a time when other Disciplinary Rules and the predominant sentiment in the legal profession made it impermissible for lawyers to advertise.

\textsuperscript{101} Id.
\textsuperscript{102} Id.
\textsuperscript{103} Id.
to a state Code of Professional Responsibility which contains DR 2-102(E) must adhere to this Disciplinary Rule until such time as it is amended or abolished by that state's Bar governing organ. He must therefore be able to gauge his conduct on the basis of the opinions and cases which have interpreted DR 2-102(E) until such time as it is removed from the Code by his state.

A lawyer must be able to judge his conduct under the standards of the *Bates* decision as well as under the Code of Professional Responsibility as it is adopted by his state. In *Bates*, the Court held that the Code could not prevent the flow of truthful information "concerning the availability and terms of routine legal services." Acknowledging that many problems remained to be resolved in this area, the Court also recognized the role of the Bar Associations in "defining the boundary between deceptive and nondeceptive advertising."

In the companion cases of *In Re Primus* and *Ohralik v. Ohio State Bar Association*, the Supreme Court delineated further this boundary. In *Primus* the court stated:

> The State is free to fashion reasonable restrictions with respect to the time, place and manner of solicitation by members of its Bar. The State's special interest in regulating members of a profession it licenses, and who serve as officers of its courts, amply justifies the application of narrowly drawn rules to proscribe solicitation that in fact is misleading, overbearing, or involves other features of deception or improper influence . . . .

> [A] State also may forbid in-person solicitation for pecuniary gain under circumstances likely to result in these evils.

In *Ohralik*, the Court upheld the application of DR 2-103(A)

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104. Id.
105. Id.
106. 436 U.S. 412 (1978) [hereinafter cited as *Primus*].
107. 436 U.S. 447 (1978) [hereinafter cited as *Ohralik*].
108. Supra note 111.
109. *Primus* at 1908 (citations and footnotes omitted). Both the *Primus* and the *Ohralik* decisions must be read in their entirety for a complete understanding of the principles contained therein. The dignified solicitation approved in *Primus* should be contrasted with the almost classic example of ambulance chasing found in *Ohralik*.
110. Supra note 112.
111. DR 2-103(A) of the Ohio Code of Professional Responsibility (1970) reads: "A lawyer shall not recommend employment, as a private practitioner, of himself, his partner, or associate to a non-lawyer who has not sought his advice
and DR 2-104(A)\textsuperscript{112} of the Ohio Code to a case of in-person solicitation that was in fact a blatant example of ambulance chasing, reasoning that even in light of the \textit{Bates} decision, the State does have a "legitimate . . . interest in preventing those aspects of solicitation that involve fraud, undue influence, intimidation, overreaching and other forms of 'vexatious conduct.'"\textsuperscript{113}

The dual practitioner must be very careful that his second business or profession does not provide the opportunity for soliciting clients by methods condemned in these three important cases. He should be especially watchful that legal clients who first approach him as clients or customers of the second business have the advice of independent counsel when necessary. He must not attempt to unduly influence these clients' opinions in regard to legal matters. The attorney must exercise great caution when handling legal matters for these clients which are closely related to the attorney's second occupation. If the attorney conforms to the mandates of these three cases, and he meets the requirements of The Code of Professional Responsibility, he may practice law and another business simultaneously.

\textbf{Conclusions}

While the reasoning process has changed with the abandonment of the indirect solicitation and feeder standards for judging a dual practitioner's conduct, the results under both the Canons and the Code are essentially the same. Under the Canons, improper activity would be condemned under Canon 27 as self-touting, feeding a law practice, or solicitation of clients for his law practice. The Code condemns specific conduct under one of the Disciplinary Rules, in this instance DR 2-102(E). There is one important difference, however; no longer must an attorney who is also an accountant choose one of his professions over the other and practice that profession exclusively as he was required to do under ABA Opinion regarding employment of a lawyer."

\textsuperscript{112} DR 2-104(A) of the \textit{Ohio Code} (1970) reads in pertinent part:

A lawyer who has given unsolicited advice to a layman that he should obtain counsel or take legal action shall not accept employment resulting from that advice except that:

(1) A lawyer may accept employment by a close friend, relative, former client (if the advice is germane to the former employment), or one whom the lawyer reasonably believes to be a client.

\textsuperscript{113} \textit{Ohralik}, \textit{supra} note 112.
297. An attorney may pursue any other profession he desires as long as he keeps it separate from his law practice and strictly adheres to the Code of Professional Responsibility. All the provisions of the Code, not just DR 2-102(E), will apply to an attorney’s conduct while he is engaged in another business or profession.

DR 2-102(E) is no longer a viable part of the ABA Code. It does, however, remain in effect in many states. Until such time as every state amends DR 2-102(E) out of its Code of Professional Responsibility, a dual practitioner must respect its requirements and closely follow its mandates. The attorney must also meet the requirements of the case law which is developing in the area of solicitation of clients. Within these narrow confines, it is possible for the attorney to pursue both the practice of law and another profession or business.

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