

*NEW YORK STATE BAR ASSOCIATION*  
*Committee on Professional Ethics*

Opinion #493 - 10/5/78 (56-78)

Overrules in part #26, 114, 135, 206, 244

Topic: Dual practice; real estate broker; law office

Digest: A lawyer may conduct his law practice and a real estate brokerage business from the same office, but he cannot solicit employment as a lawyer in violation of any statute or court rule, and he cannot act as lawyer and broker in the same transaction

Code: DR 2-101, 2-102, 2-103

QUESTION

May a lawyer conduct a real estate brokerage business from the same office in which he conducts his law practice?

OPINION

Prior to the decision of the United States Supreme Court in *Bates v. State Bar of Arizona*, 433 U. S. 350 (1977), this Committee uniformly held that a lawyer could not with ethical propriety conduct his law practice from the same office in which he or his spouse conducts a real estate brokerage business. N.Y. State 26 (1965), N.Y. State 114 (1969), N.Y. State 135 (1970), N.Y. State 206 (1971), N.Y. State 244 (1972). These holdings were premised on the view that advertising by lawyers is unethical, a view which also led to former DR 2-102(E):

"E. 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, nor shall he identify himself as a lawyer in any publication in connection with his other profession or business."

Certain other professions, such as accounting and architecture, also operated under rules of ethics forbidding advertising, solicitation and promotion, and we held that it was proper for a lawyer to engage in such occupations from his law office, provided that he met the requirements of DR 2-102(E). N Y. State 206, *supra*.

The *Bates* decision swept away many of the prohibitions against advertising by lawyers and led to material revisions of the Ethical Considerations and Disciplinary Rules set forth under Canon 2 of the Code of Professional Responsibility, including the repeal of DR 2-102 (E). See, N.Y. State 487 (1978). We no longer perceive any reason why a lawyer cannot conduct his law practice and a real estate brokerage business from the same office, and to the extent that the foregoing opinions held to the contrary they are hereby overruled.

Certain safeguards, however, must be noted and followed.

A lawyer continues to be barred from soliciting employment in violation of any statute or court rule (although advertising in accordance with DR 2-101 is not deemed to be such prohibited solicitation). DR 2-103 (A). Similarly, a lawyer who has given unsolicited advice to an individual to obtain counsel or take legal action cannot accept employment resulting from that advice, in violation of any statute or court rule. DR 2-102(A). While this Committee does not rule on questions of law, lawyers considering the matter should take into account the following provisions of Judiciary Law §479:

"It shall be unlawful for any person or his agent, employee or any person acting on his behalf, to

solicit or procure through solicitation either directly or indirectly legal business, or to solicit or procure through solicitation a retainer, written or oral, or any agreement authorizing an attorney to perform or render legal services, or to make it a business so to solicit or procure such business, retainers or agreements."

Finally, we have held on a number of occasions that a lawyer cannot act in that capacity on behalf of any party to a real estate transaction in which the lawyer or his spouse has acted as broker, because of the possible conflict between the interests of the client and those of the lawyer. N.Y. State 208 (1971), N.Y. State 244, *supra*, N.Y. State 291 (1973), N.Y. State 340 (1974). We continue to be of that view.

For the reasons stated, and subject to the qualifications hereinabove set forth, the question posed is answered in the affirmative.