

NEW HAMPSHIRE BAR ASSOCIATION
Ethics Committee Advisory Opinion #1984-85/9
Dual Professions: Attorney-Realtor
November 13, 1984

RULE REFERENCES:

SUBJECTS:

CODE REFERENCES:

- *DR 2-101
- *DR 2-102
- *DR 2-103
- *DR 2-104
- *DR 3-103
- *DR 9-102

ANNOTATION:

QUESTION:

A lawyer who is admitted to practice in New Hampshire, but who maintains an office and practices primarily in Boston, has formed a New Hampshire corporation with a licensed realtor and another party experienced in the real estate business. The purpose of the corporation is to develop, manage, and sell real estate in the (small town) area. A press release about the corporation identifies the lawyer as a resident of (small town) who practices law in Massachusetts and New Hampshire. The inquiry letter states that the lawyer has never had a law office in this state, does not intend to have an office here, and does not contemplate being in the general practice of law, or seeking clients where the possibility of a conflict between the law practice and his real estate business would exist. However, the letter further states that the lawyer presently practices law and has several "large clients" in the North Country. The lawyer has sought a reconsideration of a reconsideration of two prior Ethics Opinions issued by the predecessor of this Committee, holding that New Hampshire lawyers may not engage in the business of real estate.

RESPONSE:

In 1970 the New Hampshire Bar Association Committee on Professional Conduct issued an opinion stating that a New Hampshire lawyer could not also be a licensed real estate broker in this state. (See Informal Opinion No. 2.) In 1975, the New Hampshire Supreme Court Committee on Professional Conduct, after notice and hearing, reaffirmed this position. (See Formal Opinion, December 5, 1975.) The court stated that permitting an attorney/broker dual practice would create the following problems: conflict of interest, solicitation, "feeding," breach of attorney/client relationships, public confusion, billing and sharing of fees. All of these potential problems give rise to an appearance of impropriety that cannot be avoided when a lawyer simultaneously operates a real estate business.

In 1982, this Committee reconsidered the prior opinions and declined to change the positions taken in them. (Advisory Opinion #1982-3/1, 10/12/82.) Now a lawyer who has formed a real estate company with a licensed broker has asked for a further reconsideration to permit him to do this.

We see no reason to change this position. The inquiring lawyer's planned activities are exactly the type that the opinions are designed to prevent. Even the press release announcing the venture and identifying one of the principals as a lawyer could be an arguable violation of DR 2-102 (E). The planned activities of the lawyer would create an impermissible appearance of impropriety and cannot be allowed under the present Code. If the lawyer were to divest himself of any ownership interest and were to act solely as corporate counsel under an employment or retainer arrangement, or if the lawyer were to become an inactive member of the New Hampshire Bar and were to so notify his existing clients in this state, the result may be different

DISSENTING OPINION

The existing Ethics Opinions on this matter should be reexamined and reversed. The dissenters feel that the present rule acts as an unwarranted restraint of trade.