

Final

**ETHICS ADVISORY PANEL  
OPINION NO. 96-26, REQUEST NO. 669  
November 14, 1996**

**FACTS:**

The inquiring attorney's practice consists primarily of estate planning. He/she has recently obtained a license to sell life, accident and health insurance.

**ISSUES PRESENTED:**

The inquiring attorney asks (a) whether he/she may sell insurance to new and existing legal clients and (b) whether he/she may perform legal services for new and existing insurance customers.

**OPINION:**

The inquiring attorney may not sell insurance to estate planning law clients, and may not provide estate planning legal services to insurance customers.

**REASONING:**

The Rhode Island Supreme Court Rules of Professional Conduct do not address the conduct of simultaneously engaging in the practice of law and another occupation. The former Rhode Island Code of Professional Responsibility expressly recognized that lawyers may be engaged in both the practice of law and another profession or business. See former R.I. Code of Professional Responsibility DR2-102(E)(lawyers engaged both in practice of law and another business or profession shall not so indicate on letterhead, office sign, or business card, nor identify themselves as lawyers in any publication in connection with other business or profession.) Because none of the provisions of the present Rules of Professional Conduct prohibit a lawyer from pursuing additional occupations, the Panel concludes that practicing lawyers may simultaneously engage in other businesses or professions, including the insurance business. See Mich. State Bar Comm. on Professional and Judicial Ethics, Op. RI-135(1992).

Nevertheless, the practice of more than one occupation raises numerous ethics issues for attorneys. Id. In all such cases, the Rules of Professional Conduct relating to transacting business with clients, advertising, soliciting legal employment, conflicts of interest, and confidentiality must be observed. The inquiring attorney has an estate-planning law practice and

simultaneously is a licensed insurance broker for life, accident, and health insurance. While the Panel takes the position that the inquiring attorney may conduct both businesses, selling insurance products to law clients and providing estate planning legal services to insurance customers are impermissible under the Rules.

Two Rules bear directly on the question of whether the inquiring attorney may sell insurance to law clients. Rule 1.8, which sets the parameters of business transactions between lawyers and clients, states in pertinent part:

- (a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:
  - (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client;
  - (2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and
  - (3) the client consents in writing thereto.
- (b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client consents after consultation, except as permitted or required by Rule 1.6 or Rule 3.3.

Rule 1.7(b) states:

- (b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:
  - (1) the lawyer reasonably believes the representation will not be adversely affected; and
  - (2) the client consents after consultation. . . .

A lawyer engaged in another occupation such as the selling of insurance must not allow the representation of the lawyer's law clients to be materially limited by the lawyer's nonlegal business. Rule 1.7 (b). Where a lawyer provides estate planning legal services, a frequent topic

is whether and to what extent insurance products should be used to satisfy some of the client's financial objectives, and if so, which ones. N.Y. State Bar Ass'n. Comm. on Professional Ethics, Op. 619 (1991). In such matters, a central object of the representation is to advise how best to satisfy the financial needs of the client and of those for whom the client wishes or is obliged to provide. Id. The Panel believes that where a lawyer has a financial interest or affiliation with a particular insurance agency or company, the lawyer's independent professional judgment in recommending insurance products for a particular client would unavoidably, and impermissibly, be affected by the lawyer's personal interest in selling insurance. See id.; Rule 1.7(b). Given this inherent conflict, the requirements of fairness and reasonableness to the client imposed by Rule 1.8(a) are impossible to satisfy.

Both Rule 1.7(b) and Rule 1.8 permit conflicts of interest to be waived by the client's consent after consultation. As a practical matter, consultation and disclosure which are properly and fully carried out would not in most cases result in the client's consent. Aside from the practical considerations, however, the Panel does not believe that there could be meaningful consent by the law client where the estate planning lawyer has a separate interest in selling insurance. N.Y. State Bar Ass'n. Comm. on Professional Ethics, Op. 619 (1991). The client is entitled to rely on, and the lawyer is obligated to provide, independent professional judgment. Id. The opportunity for overreaching by the lawyer is substantial. Id. The Panel therefore concludes a lawyer may not solicit or accept a client's consent to such a direct and substantial conflict between the client's interest and the lawyer's interest in the situation presented by the inquiring attorney. See id.

Additionally, a lawyer is obligated to hold client communications in confidence, may not disclose them to third parties without the client's consent, and may not appropriate them to his/her own use. See, Rules 1.6 and 1.7(b). In the event of a dispute between an insurer and an insured, the lawyer must not compromise any confidence belonging to the client-insured. Mich. State Bar Comm. on Professional and Judicial Ethics, Op. RI-135(1992).

The inquiring attorney also asks whether he/she may provide estate planning legal services to insurance customers. Rule 7.3 is explicit in its prohibition against the solicitation of professional employment from a prospective client with whom the lawyer has no family or prior professional relationship. Rule 7.3(a) states:

(a) A lawyer may not solicit professional employment from a prospective client with whom the lawyer has no family or prior professional relationship, in person or otherwise, when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. The term "solicit" includes contact in person, by telephone or telegraph, or by other communication directed to a specific recipient and includes any written form of communication directed to a specific recipient and not meeting the requirements of paragraph (b) of this rule.

The term "professional relationship" as used in Rule 7.3 refers to the attorney-client relationship, and not to some other business relationship. Mich. State Bar Comm. on Professional and Judicial Ethics, Op. RI-135 (1992). Accordingly, the inquiring attorney may not, in the course of selling insurance products, suggest to insurance customers the need for estate planning legal services and then provide those legal services. Similarly, the inquiring attorney may not otherwise offer legal services to insurance customers by phone or in person. See Rule 7.3(a).

A lawyer may send targeted direct mail which is not false or misleading to prospective clients for the purpose of soliciting legal business, subject to the requirements and restrictions set forth in Rule 7.3(b). However, Rule 1.7(b) would prohibit the inquiring attorney from representing an insurance customer, as there exists an inherent conflict of interest, already discussed, which materially limits the representation of such a client. Non-waivable conflicts exist which preclude the inquiring attorney from soliciting or providing estate planning legal services to insurance customers.

The Panel therefore concludes that the proposed arrangement is impermissible. The Rules of Professional Conduct do not permit the inquiring attorney to sell insurance products to law clients for whom he/she has provided estate planning legal services, and do not permit him/her to provide estate planning legal services to insurance customers.

The Panel's opinion speaks only to the Rules of Professional Conduct and does not address issues of substantive law such as privilege and disqualification which may arise in the instant situation.