

Ethics Opinion No. 79-3

Can a Law Firm Ethically Employ an Accountant to Perform Services for the Firm and for Its Clients?

This Committee has been requested to provide an opinion as to whether a law firm, regardless of its business form, may ethically employ an accountant to perform services for the firm and its clients. The specific services addressed in the inquiry are as follows:

- a. Preparation of tax returns and assisting attorneys in the preparation of tax returns.
- b. Performing business and personal audits, establishing bookkeeping procedures for clients and preparing payroll disbursements for clients.
- c. Assisting attorneys in providing management advisory services.
- d. Assisting attorneys on matters relating to business insolvency, bankruptcy, establishing and terminating businesses.
- e. Compensation planning and contract administration.

It is the opinion of this Committee that a law firm may ethically employ an accountant to advise and assist attorneys in the performance of legal services and to provide accounting services relating to or arising from legal services provided by the firm.

It is the opinion of this Committee that a law firm may not employ an accountant to perform business or personal audits which will be certified or which will be disclosed or disseminated to any person other than the client. With regard to such services provided to the client, the attorney shall maintain a direct relationship with the client, shall supervise the delegated work and shall be professionally responsible for the work product.

An accountant so employed may not be a partner and shall be compensated by salary so as to avoid the prohibitions of Disciplinary Rules 3-102 and 3-103. Further, the letterhead, office sign and professional cards of the law firm shall not indicate the availability of the accounting services to clients of the firm.

Ethical Consideration 3-6 states:

A lawyer often delegates tasks to clerks, secretaries, and other lay persons. Such delegation is proper if the lawyer maintains a direct relationship with his client, supervises the delegated work, and has complete professional responsibility for the work product. This delegation enables a lawyer to render legal services more economically and efficiently.

With regard to the delegation of duties to lay employees, the American Bar Association has ruled that:

A lawyer can employ lay secretaries, lay investigators, lay detectives, lay researchers, *accountants*, lay scribes, non-lawyer draftsmen or non-lawyer researchers. In fact, he may employ non-lawyers to do any task for him except counsel clients about law matters, engage directly in the practice of law, appear in court or appear in formal proceedings a part of the judicial process, so long as it is he who takes the work and vouches for it to the client and becomes responsible to the client.

ABA Opinion 316 (1967).

It is therefore clear that a law firm may employ an accountant to advise and assist the attorneys of the firm and provide other services relating to the legal duties assumed by the law firm. Those services could include the preparation of tax returns which may properly be prepared by attorneys, so long as the law firm is maintaining a direct relationship with the client, supervising the preparation of the return and accepting professional responsibility for the work product.

A somewhat more difficult question is presented with regard to work by the accountant employee consisting of performance of business or personal audits, setting up bookkeeping procedures for clients, preparing payroll disbursements for clients and similar services which, while law-related, would not properly be the function of an attorney. With regard to this type of arrangement, at least one Bar Association has held that a lawyer may employ an accountant on a salary basis to advise the attorney, but may not employ the accountant to advise his clients. Kansas Bar Association, Opinion 11, October 18, 1957.

Nevertheless, in view of the trend which currently permits an attorney to engage in other occupations from the same location as the lawyers' law office, there would not appear to be a valid ethical basis for prohibiting a law firm, through its non-lawyer personnel, from providing law-related services. However, obvious difficulties are inherent in the provision of such services, as was discussed in ABA Opinion 328 (1971) which related to a lawyer practicing the profession of law and public accounting from one office. With regard to the ethical standards that would be applied, to the performance of the law-related work conducted in the second occupation, the opinion provides that:

If the second occupation is so law-related that the work of the lawyer in such occupation will involve, inseparably, the practice of law, the lawyer is considered to be engaged in the practice of law while conducting that occupation.

Accordingly, he is held to the standards of the Bar while conducting that second occupation from his law offices. With this qualification, the lawyer may carry on a law-related occupation, such as that of a CPA from the same office.

It would appear, therefore, that accounting services rendered by a law office employee would be subject to the requirements that the attorney maintain a direct relationship with the client, supervise the delegated work, and retain professional responsibility for the work product. That burden may be significant if the supervising attorney is not qualified to review and evaluate the accounting service being provided.

The issues related to the preparation of personal or business audits by an accountant/employee was discussed in ABA Opinion 272 (1946). While that opinion pre-dates the adoption of the Code of Professional Responsibility, it appears to have continuing applicability. That opinion states in part as follows:

It is entirely ethical for a firm of lawyers to employ a public accountant (whether CPA or not) on a salary basis to advise the law firm on matters of accounting and to assist the firm in connection with accounting problems arising in its law practice. For a law firm to employ an accountant on the basis of a division of the fee of the law firm would violate Canon 34, forbidding the division of legal profits or fees with those who are not lawyers. To permit an accountant to certify statements under his own name as a CPA for the use of the clients of the law firm would violate the provisions of Canon 35 requiring the lawyer relationship to the client to be personal and direct, without the intervention of any lay intermediary.

A law firm could not furnish a certificate of a CPA in its employ to a client for public use of the client without a disclosure in connection with this certificate that the CPA was an employee of the law firm. However, we have frequently ruled that for a law firm to state publicly that it has in its employ a CPA constitutes a violation of Canon 27. Accordingly, it would seem impossible for the law firm to furnish the statements specified without violating this Canon.

That opinion further determined that it would not matter whether or not the law firm participated in the compensation paid for the statement and in response to an inquiry regarding the possibility of utilizing a leave of absence or other temporary arrangement so that the law firm could consider the accountant as rendering the service on its own time, the Committee said:

The relations of the law firm, the accountant, and the clients contemplated by these questions, are, in our opinion, too close to be insulated by any such artificial arrangement.

The requirements of Canon 35 requiring the relationship of the attorney to his client to be direct and personal would appear to have been superceded by Ethical Consideration 3-6 of the Code of Professional Responsibility and the

advertising prohibitions of Canon 27 would seem to be currently covered by DR 2-102(E) and related provisions. Therefore, preparation of certified audits by an accountant/ employee of a law firm for utilization by the client would not be ethically proper.

It should be noted that this opinion does not address a multitude of questions related to the legality of the proposed employee practice, nor is it directed to any ethical criteria that might be of concern to the proposed accountant/employee. For example, since a professional corporation is prohibited from rendering more than one type of professional service, a legal question would exist as to whether a law firm utilizing the professional corporation form of business could properly render accounting services.

Adopted by the Board of Governors on October 26, 1979.