

**American Bar Association**  
**BUSINESS DEALINGS WITH CLIENTS AND OPERATION OF LAW-RELATED**  
**BUSINESS FROM A LAW OFFICE**

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The Model Code does not prohibit a lawyer from recommending the services of one client to another client as long as full disclosure of any financial relationship is made. Sharing office space with a private business or acting in a dual capacity is also not precluded provided the lawyer adheres to the Model Code and avoids the risks which are inherent in conducting a law practice and law-related business simultaneously.

A law firm specializing in the practice of patent law requests an opinion as to the ethical propriety under the Model Code of Professional Responsibility of certain proposed dealings with a client corporation, XYZ, Inc. XYZ, Inc. assists inventors in obtaining patents and in marketing their inventions. Among other services performed by the company is that of assisting customers in finding patent counsel. The law firm asks the Committee the following questions:

- I. May a lawyer in the firm receive a commission from XYZ, Inc. in return for referring or recommending the services of XYZ, Inc. to an inventor client?
- II. May a patent lawyer in the firm operate a local 'branch office' of XYZ, Inc. out of the law office, from which XYZ, Inc. will conduct advertising, correspondence and customer contacts?
- III. Does the answer to the preceding question differ if the lawyer is not a patent law specialist, but a lawyer engaged in general practice?

**I.**

One of the hallmarks of the legal profession is the obligation of a lawyer to exercise professional judgment solely on behalf of his client. The ability of a lawyer to obtain a commission from one client for referring another client to the first client could well work to impair the free judgment of the lawyer in deciding whether the services of the first client are needed by the second client.

However, a lawyer will not violate any Disciplinary Rule of the Model Code in recommending the services of one client to another client so long as the second client consents after the lawyer has made full disclosure of the financial relationship of the lawyer with the first client. DR 5-107(A)(2). See also ABA Formal Opinion 196 (1939), Formal Opinion 304 (1962) and Formal Opinion 331 (1972).

## II.

The second question envisions an arrangement in which the law firm and XYZ, Inc. share a local office, with a lawyer from the firm serving in the dual capacity as lawyer and as local representative of the private corporation. The question raises several related issues, including (a) whether it ever is proper for a lawyer to share offices with a private business and (b) the ethical resolution of the problems faced by the lawyer who seeks to engage simultaneously in the practice of law and a related business.

### (A)

The Model Code does not prohibit a lawyer from sharing office space with a private business. Nonetheless, steps must be taken by any lawyer who practices in such a setting to avoid possible misunderstanding that could be created by sharing offices. Because certain specific legal obligations and ethical protections hinge upon the existence of an attorney-client relationship, care must be taken to leave no doubt as to when that relationship exists and when it does not. For instance, privileged communications with a lawyer are confidential under the Model Code and by law. But communications with a representative of an inventor-assistance business (even if that person were licensed as a lawyer) would not be privileged. The need to create and maintain an office setting and operation that avoids confusion as to the scope of one's dealings as a lawyer, therefore, is imperative, particularly when the office-sharer is engaged in a law-related private business.

Thus, the physical layout of the office must be arranged in a fashion that makes it clear to all clients and others that they are dealing with the law firm at times when in fact this is the case. Door signs, telephone listings and receptionist contacts, for example, must enable those who deal with the office-sharers to discern readily whether their dealings are with one acting as a lawyer or with one acting in a private business capacity. Care also must be taken to separate legal files from those belonging to the business.

### (B)

The question whether a patent lawyer ethically may, in addition to practicing law, operate a local 'branch office' of XYZ, Inc. poses the problems of combining the practice of law with a private business. The former Canons of Professional Ethics did prohibit a lawyer from engaging in the practice of law and at the same time managing a law-related business. In earlier opinions of the Committee, the most common explanation for disfavoring such duality was that the second occupation might constitute 'indirect solicitation' and serve as a 'feeder' to the law practice. ABA Formal Opinion 57 (1932) and Formal Opinion 297 (1961).

After the adoption of the Model Code, however, the former prohibition against combining the practice of law with a law-related business was eased, as the Committee noted in Formal Opinion 328 (1972):

Perhaps because the terms 'indirect solicitation' and 'feeding the law practice' are vague as well as overbroad, they were entirely omitted from the Code of Professional

Responsibility. The Code's draftsmen thus indicated an intent not to rely upon those vague phrases as standards by which to judge the outside activities and occupations of lawyers. Instead, the underlying evils were attacked in the Code by means of several comprehensive but specific Disciplinary Rules, particularly DR 2-101 through DR 2-105. Accordingly, this Committee cannot condemn any activity today on the basis of 'indirect solicitation' or 'feeding' of a law practice. Any proscription must be based upon the provisions of the Code.

Thus, there is no provision in the Model Code which precludes a lawyer from engaging in a second profession or business at the same time.

But the absence of a prohibition does not eliminate the risks which are inherent in conducting a law practice and a law-related business simultaneously. The business dealings between the lawyer and XYZ, Inc. could give rise to conflicts between the lawyer's duty to furnish independent legal counsel to another client and the business interests of the lawyer acting in the capacity of invention promoter. When the interests of XYZ, Inc. and the other client diverge, they may at any stage of the professional relationship, the lawyer who is serving in dual capacities will be confronted by conflicting interests and loyalties. To the extent that the nonlegal services provided by the lawyer comprise a greater portion of the services rendered, the threat to the exercise of independent professional judgment is heightened. The nonlegal services being provided by the lawyer can become a separate financial and business interest which it is the continuing duty of a lawyer to disclose in a clear form to the client. A lawyer who elects to engage in a law-related business while providing legal advice to customers of that business will, as a practical matter, have the substantial burden of establishing that any legal advice given has been free of the taint of any bias created by the dual capacities in which the lawyer has acted.

The lawyer must also be cautious not to stray into the unauthorized practice of law, especially when a business corporation, which is legally prohibited from practicing law, is involved. Careful attention must be given to Canon 3, the Ethical Considerations thereunder, and the provisions in the Disciplinary Rules which prohibit a lawyer from aiding a nonlawyer in the unauthorized practice of law (DR 3-101(A)) from sharing legal fees with a nonlawyer (DR 3-102(A)) and from forming a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law (DR 3-103(A)).

### III.

The Committee is of the opinion that the response to the previous question applies equally to a patent lawyer and to a lawyer engaged in the general practice of law. We do not, of course, address any possible legal question concerning the operation of a business which assists inventors by a lawyer who is not certified as a patent specialist. The Committee does not answer questions of law.

ABA Informal Op. 1482.

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