

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-123
Issued: September 1975

This opinion was decided under the Code of Professional Responsibility, which was in effect from 1971 to 1990. Lawyers should consult the current version of the Rules of Professional Conduct and Comments, SCR 3.130 (available at <http://www.kybar.org>), especially Rules 7.01-7.50 and the Attorneys' Advertising Commission Regulations, before relying on this opinion.

Question: May a lawyer in general private practice engage in part-time claims adjusting for an independent adjusting company?

Answer: Qualified yes.

References: DR 2-102, 2-103(A), 3-102, 3-103; Opinion KBA E-63, E-74

OPINION

Obviously, the claims-adjusting business must be conducted entirely separately from the applicant's law practice, physically and operationally, and the applicant must comply with DR 2-102(E), DR 3-102, DR 3-103, and all other rules applicable when a lawyer attempts or proposes to engage in another profession or employment. We believe the question presented is concerned only with the possible use of the claims-adjusting business as a "feeder" to applicant's law practice. DR 2-103(A) states that a lawyer may not recommend professional employment of himself, his partner, or his associate, to a layman who has not sought his advice concerning employment of a lawyer. Where a lawyer engages in a second profession or business, occasions will arise in the course thereof in which his customers or clients need legal services. The lawyer is in a position to influence employment of himself as a lawyer in violation of DR 2-130(A).

We have heretofore held that some businesses or professions are so closely related to the practice of law that there is no realistic possibility that the side-business will not be used to "feed" the law practice. In such cases the lawyer is forbidden to engage in the side-business altogether, Opinion KBA E-63. In that case the side business was preparation of income tax returns. We decided that such business is the practice of law when done by a lawyer, and would be inseparable from the applicant's practice of law.

We have also recognized that there are some businesses and professions which may readily be used to "feed" a law practice, but such use does not appear to be virtually inevitable. In such cases, the lawyer may engage in the side-business subject to numerous restrictions, Opinion KBA E-74. In that case the side-business was a real estate business.

Without purporting to find any general pattern in Opinion E-63 and E-74, we find that it is not inevitable that a lawyer engaged in a claims-adjusting business will use it to “feed” his law practice. He may properly engage in the business if he observes an appropriate rule to prevent use of the business as a “feeder.”

What should that rule be? He must decline employment as a lawyer in any matter he handled as a claims adjuster, or any related matter, Opinion KBA E-74. Must he go further and decline employment as a lawyer by any person with whom he has come in contact as a claims adjuster? We do not think so. We do not believe that such a contact would have any appreciable influence on a client seeking a lawyer to handle an unrelated matter. Further to tell a lawyer that he is forever barred from representing any person with whom he comes in contact as a claims adjuster is to tell him, in effect, that he cannot conduct a claim adjustment business.

Note to Reader

This ethics opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530 (or its predecessor rule). The Rule provides that formal opinions are advisory only.