
E-85-5 Law and title insurance practice

Facts

A group of attorneys who are the shareholders of a service corporation engaged in the practice of law also serve as the shareholders of a title insurance and abstract company. The law office and the title insurance and abstract company are located in the same building.

Questions

1. May a lawyer engage in the dual practice of law and title insurance policy writing?
2. Is it permissible for a law firm to refer title insurance or abstract matters to the title insurance company without informing the client that the company is owned by the attorneys?
3. May the law office and the title insurance and abstract company operate within the same building?

Opinions

1. The State Bar Committee on Professional Ethics has not specifically addressed this question. However, there is no disciplinary rule under the Wisconsin Code of Professional Responsibility, codified in the Wisconsin Supreme Court Rules, that prohibits a lawyer from engaging simultaneously in the practice of law and in another business, profession or endeavor. *See generally* Formal Opinion E-82-11, 57 Wis. Bar Bull. 77 (June 1984); SCR 20.08(5).

It should be noted, as stated in ABA Formal Opinion 328 (August 1972), when the second profession or occupation is so law-related, as in the case of performing title insurance duties, the attorney almost inevitably will engage to some extent in the practice of law. In such a situation, the attorney will be held to the standards of the bar and the Code of Professional Responsibility while conducting the second occupation.

To summarize, an attorney may engage simultaneously in the practice of law and in title insurance writing and should observe the restrictions of the Code of Professional Responsibility when engaging in either profession.

2. An attorney who is engaged by a client in a real estate transaction may refer title insurance and abstract matters to a title insurance and abstract company provided there is full disclosure to the client of any financial interest in the company. ABA Formal Opinion 331 (December 1982). The purpose of this requirement stems from the possible conflict of interest arising from the financial gain made by the attorney in referring title insurance and abstract matters to a company in which the attorney has a financial interest. ABA Formal Opinion 304 (February 1962). It is argued that the financial gain made by the attorney in referring title insurance matters may influence his or her judgment on the need for such insurance. *Id.*; *see also* Wisconsin Supreme Court Rule 20.23(1).

Accordingly, it would not be proper for an attorney to refer title insurance or abstract matters to an owned title insurance company without full disclosure to the client of any financial relationship that the attorney has with the company.

3. The Wisconsin State Bar Committee on Professional Ethics addressed the issue of law offices and other businesses operating within the same building in Memorandum Opinion 4/77A, 57 Wis. Bar Bull. 101 (June 1984). That opinion held that it may be ethically proper for a law office to share a building with other businesses provided it is clear to the public that the law office and other businesses are entirely separate and independent entities. Thus, they should not occupy the same physical space, should have separate telephones and there should be an office directory with separate listings to indicate that the entities are not connected. *Id.*

Accordingly, the law office and the title insurance and abstract company may operate within the same building provided it is clear to the public that they are separate entities.