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Lawyer Also Practicing As Financial Planner

Guidance has been sought as to the ethical considerations when a lawyer with a predominantly real estate practice seeks to expand his or her business beyond the practice of law to include services as a financial planner. It is contemplated that the lawyer will work with others in financial planning. Often this question is presented solely in the context of how the lawyer with dual professions presents himself or herself to the public. Here however, as the question has been put in very general terms, the response shall be similarly general. The ethical considerations are, in this broader consideration, extensive.

A lawyer who seeks to engage in other business or professional activity must be ever vigilant. The lawyer needs to take a top-to-bottom review of his or her law practice and determine the many ways in which the practice of the other profession and the law practice may impact one upon the other. Some of those considerations are set forth below. The considerations listed are many, but even so are likely not exhaustive.

The first step for an attorney who is going to take up financial planning is a thorough review of Rule 1.8(a). This provision of the Rule addresses potential conflicts of interest where an attorney enters into business transactions with a client or former client. Of particular significance are the requirement that the lawyer advise the client in writing whether the lawyer will be providing legal services, and the requirement that the client give written informed consent to both the essential terms of any transaction and the lawyer's role in the transaction. Rule 1.8 must be considered in its entirety but must also be interpreted in light of Rule 2.1, which deals with the role of the lawyer as advisor. Rule 2.1 contemplates that the advice given by a lawyer may extend beyond the law itself to include, among other things, economic considerations relevant to the situation of the client. The commentary to Rule 2.1 expressly acknowledges that other professionals may best address the client's problems and financial specialists are specifically mentioned. The commentary to Rule 2.1 also states that there will be circumstances in which the lawyer should recommend that a client seek these specialized professional

services. Thus the obligation to assist a client competently may lead the lawyer to recommend financial counseling or planning, which would lead immediately to consideration of Rule 1.8. The two Rules are virtually inseparable in the context of a lawyer who seeks to practice additionally as a financial planner.

It must be assured that client funds for legal matters are handled properly. In this regard *see generally* Practice Book Section 2-27, and note the changes effective July 1, 2007. Such accounts must conform to Rule 1.15 and are subject to random inspection by the Statewide Grievance Committee. Legal clients' funds must be kept separate and distinct from the lawyer's personal funds and also separate from investment funds of the lawyer, those with whom the lawyer engages in the financial planning business and financial planning clients (who may also be law clients). Similarly, one must keep financial planning fees separate from fees that are earned or retained on behalf of a client seeking or provided legal services. Fees earned by a lawyer in legal matters may not be shared with non-lawyers such as those with whom the lawyer provides financial planning services. Rule 5.4.

It must also be assured that those with whom one is associated in the financial planning business do not suggest that legal services may be obtained through them, in order to avoid any appearance that one is associated with anyone engaged in the unauthorized practice of law. *See* Rule 5.5. Likewise, any business association with financial planners must be carefully organized; a lawyer may not form a partnership or association with any non-lawyer if any of the activities of the association or partnership constitute the practice of law. *See* Rule 5.4.

Advertising may reference licensing or certification in multiple disciplines. Thus the lawyer's advertising may state that he or she is a certified financial planner. However, this fact must not be stated in such a way as to suggest that the financial planner certification implies any specialization or unusual skills as an attorney. *See* Informal Opinion 95-05 and Formal Opinion 28. Rules 7.1 - 7.4A now cover lawyer advertising exhaustively in conjunction with Practice Book Section 2-28A. Both the Rules and the Practice Book sections must be reviewed to assure appropriate advertising content and to ensure compliance with filing requirements with the Statewide Grievance Committee.

In dealing with law clients, the scope of representation as a lawyer must be made clear in order that there be no confusion between legal services and financial planning services. Obviously, it is desirable that this be done in a written letter of representation or retainer agreement. Again, a thorough understanding of Rule 1.8 is critical. Although the current request describes a lawyer with a real estate practice, it may easily be foreseen that with additional financial planning expertise, the lawyer may find his or her practice drifting toward tax matters or estate planning. In such situations it is foreseeable that the lawyer may need to be more careful in describing the scope and nature of legal services performed,

especially if provided in conjunction with financial planning. Additionally, all fee agreements for legal services must be clear and reasonable and not permit participation by non-lawyers. Rule 1.5. Moreover, the lawyer should ensure that non-lawyer business associates understand these requirements. *See* Rule 1.2 as it pertains to scope of representation. Where a lawyer is performing services that are both law related and related to financial planning, there may be a heightened obligation to communicate with the client not because his status as a finical planner gives him special expertise as a lawyer but because, for example, he may possess special knowledge or understanding of market conditions, which goes to the issue of what constitutes keeping a client reasonably informed about a matter.

It must also be recognized that a lawyer who takes on clients as a financial planner has business relationships that may generate conflicts of interest impacting upon clients or former clients. Examples might be where a lawyer in real estate practice has represented banks, and then as a financial planner has to consider recommending investment in a bank that is a former, present, or potential client. The lawyer must establish a conflict-check system that identifies both law clients and financial planning clients; representation of the latter may have arguable legal dimensions that might lead to conflicts of interest. *See* Rules 1.7, 1.8 and 1.9. The lawyer must also be aware of client secrets and confidences that must be protected and not exploited for personal gain or the gain of other business clients. Rule 1.6.

When a lawyer takes on an additional professional role, the ethical considerations are many. As noted above, the new role may impact the scope and terms of the lawyer-client relationship, the handing of funds and accountability for those funds, advertising (along with new filing requirements), and possible conflicts of interest. In short, there are no quick responses to the inquiry presented, because a lawyer practicing two professions must be constantly vigilant that the pursuit of both does not result in violation of either the Rules of Professional Conduct or the rules stated in the Practice Book, which also carry disciplinary consequences.

THE COMMITTEE ON PROFESSIONAL ETHICS

By _____
Wick R. Chambers, Chair