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BY PHILIP D. BRENT

A REPRINT FROM
THE JOURNAL OF ACCOUNTANCY

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THE THEME of this article is that one who becomes a CPA-attorney can render the public a better professional service in areas of common interest to both professions.

After illustrating the services rendered by a CPA-attorney, consideration is given to the desirability of dual practice and the manner of acquiring, maintaining and testing competency. Certain areas of special concern to the accountancy profession regarding independence and conflicts of interest are evaluated, and it is noted how greater understanding would result if CPA-attorneys could participate in the National Conference of Lawyers and Certified Public Accountants. Ethical problems confronting the practitioner are discussed, specialization aspects are reviewed, and, finally, the paramount consideration, the public's right to utilize the proffered service and to enjoy its freedom of choice, is presented as the overriding reason why dual practice should be commended and encouraged.

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SERVICES BY CPA-ATTORNEYS

Never has there been a sphere of human activity untouched by the law. Oliver Wendell Holmes, Jr., observed: "... as in a magic mirror, we see reflected [in the law] not only our own lives, but the lives of all men that have been" (1885). So, too, the dynamic CPA profession, responding to the needs of an increasingly complex society, evolves varied techniques to better serve the community. As these two disciplines traverse the gamut of economic and governmental activity, they often touch, sometimes clash and frequently overlap.

Justice Louis D. Brandeis observed that "the lawyer who does not know anything of economics and accounting is a public enemy." Certainly, the accountant who knows nothing of tax law or is not alert to basic legal definitions is also an enemy of the public, which has a right to secure competent professional service. All recognize that "taxes" permeate almost every area of the law and many aspects of accounting practice. Not as well appreciated is how often a client's problems begin as either an accounting or legal observation and re-

quire a joint legal-accounting response. Although examples are legion, a few will illustrate this frequency.

Example. Preparing a financial statement prompts an observation that estate planning is needed or a recapitalization will enhance a credit application or that taxes can be saved through a host of legal techniques.

Example. While installing an accounting system for a specialized industry, it becomes necessary to comply with rules and regulations of different regulatory agencies.

Example. In investigating a business which a client wishes to buy, problems are noted regarding continuity of customer goodwill, protection of business secrets, preservation of favorable leases, disposition of contracts (some of which are onerous while others are favorable), retention of favorable franchises, and a host of other interrelated legal problems, all of which are relative to the accountant's task of evaluating a business.

Example. When an incompetent's estate is administered, there is a need to differentiate between the accounting and statutory definitions of income, capital, and return of capital. Among the other problems requiring joint accounting and legal evaluation are the right and desirability of saving taxes through purchase of U. S. Treasury bonds issued at a discount and the right to convert assets into more productive uses.

Example. Often an initial engagement in one field projects the practitioner through several chapters of service, as in this case history: John Public, an experienced manager, wishes to enter his first business. Sensing the needs, the CPA-attorney immediately goes to work—he incorporates the business, divides stock among family members, negotiates a lease, elects Subchapter S status, inscribes a 1244 resolution in the minutes, prepares a schedule of pre-opening capital requirements, forecasts a monthly budget, determines break-even volumes and inventory turnovers at various mark-ups and gross profit ratios, prepares a pro forma financial statement and negotiates a line of credit with Mr. Banker. Mr. Public's success generates a substantial net worth and his adviser is requested to aid in family estate planning. Gathering facts and figures generates ideas for minimizing tax burdens while carrying forward a plan of disposition to the natural objects of Mr. Public's bounty. Marital deduction, life insurance, *Clifford* and *intervivos* income trusts must be tested against a plan for financial savings, and, at the same time, the CPA-attorney must comply with requisite legal requirements. Summaries comparing preplanning liabilities with postplanning savings must be pictorially presented for the understanding and approval of Mr. Public, and, finally, the documents and transfers of title must be properly created and completed.

All these examples illustrate how a comprehensive and expeditious service is achieved by concurrently focusing both legal and accounting skills on the applicable problem. Many accountants and lawyers are qualified to function in the respective areas where the CPA-attorney is knowledgeable but, by virtue of being specially trained in areas of common interest to both professions, the CPA-attorney can avoid the unnecessary burden of correlation and expense to John Public.

Having analyzed a problem and planned its solution, the CPA-attorney is better prepared to pursue it to its final and complete conclusion. He can clearly illuminate the blind spot where the two professions converge. Thus, the CPA (or the attorney) may lack a full awareness of the other's viewpoint, while the CPA-attorney is less apt to overlook an applicable criterion.

IS DUAL PRACTICE DESIRABLE?

Desirability or the wisdom versus the unwisdom of engaging in dual practice must be determined by the practitioner and gauged by the reaction of his clients; i.e., the public. But how can anyone remain competent in two such diverse fields? The answer is like the answer to the question of remaining generally competent in just one of the professions. You must gravitate toward the areas where education and experience lead you.

While the general practice of any profession will lead to frequent frustration and even general incompetency if one attempts to keep abreast of all areas of practice, "spreading oneself too thin" is generally avoided by the very nature of the dual practitioner's educational efforts.

In the final analysis, desirability depends on whether the dual practitioner's function is adequately performed—and this is a matter for ultimate determination by the general public. This fundamental principle had been clearly stated by the American Institute of CPAs as early as 1946 in response to critics who unsuccessfully urged the AICPA to denounce dual practice. "The compelling consideration, in our opinion, is the desirability of allowing the public complete freedom in the selection of lawyers or certified public accountants who the public believes can render most effectively the professional services it desires." The story is told, with fullness of detail, in the February 1947 issue of THE JOURNAL OF ACCOUNTANCY.[1]

Let's be realistic. A CPA's abilities are enhanced by a legal education, but why should man exert

himself to achieve additional proficiency and dedicate extra measures of time and effort? Indeed, why not indulge in the delight of leisure with work produced by the labor of others? The answer is that such a man is troubled by what Justice Holmes called "can't helps"; that is, I can't help feeling I'm not fulfilling my capacities and my obligation to better serve in each profession, if I were qualified in both. Indeed, I can better serve my clients and thus promote the public welfare. Most thinking men will applaud that spiritual urge.

HOW IS COMPETENCY EVIDENCED?

We believe all will agree that a principal function and responsibility of the AICPA and the American Bar Association is to aid in establishing adequate standards of professional competence and rules of conduct. However, the question sometimes asked of the AICPA is whether it is discharging this responsibility vis-à-vis the dual practitioner. Shouldn't we be primarily concerned with the interest of the public which has a right to rely on all the competence and skill which the practitioner ought to have and undertakes to use?

First, as noted above, it is the public's right to choose which is the foremost consideration.

Second, the dual practitioner, by virtue of concentration of effort in only certain areas, increases rather than dilutes his competency.

The best evidence that dual practitioners are competent is that their numbers have multiplied, they have prospered, and they have earned the respect of their clients and the public.

The education afforded dual practitioners and the accompanying training have enabled many to achieve positions of distinction. They function in executive capacities of world-famous corporations, as presidents and officers of various state CPA societies, as executive secretaries and as chairmen of several state boards of accountancy, as assemblymen, state senators and borough presidents, as authors and teachers. A liberal sprinkling of attorney-CPAs appears on faculties of universities, CPA professional development courses and Practising Law Institute sessions. The Commissioner of Internal Revenue, District Directors of Internal Revenue, a former state governor, judges and assistant attorney generals are CPA-attorneys. Does this connote mediocrity and public rejection? Certainly not. The tributes and accolades of the public insure that the number and services of CPA-attorneys will greatly expand to further serve the needs of today's and tomorrow's society.

HOW COMPETENCY IS MAINTAINED

A lawyer may use his CPA training to be a better lawyer and a CPA may use his legal education to be a better accountant. But learning alone will not produce either a competent lawyer or a competent accountant. Learning that is not exercised may soon be lost. To learning must be added the important ingredient of experience. Experience is, of course, best achieved by actual practice. It follows that competence in both professions is best attained by practice; and the public interest is best served by the joint skills of the two professions. The CPA-lawyer who also practices accountancy thus becomes a better lawyer than he otherwise would have been in selected segments of the law; and, similarly, the lawyer-CPA who also practices law thus becomes a better accountant in certain areas of his practice. Talent plus industry plus experience produce competence. A reasonable measure of talent and industry and experience may result in reasonable competence in one profession alone; a larger measure of those ingredients may result in reasonable competence in the concurrent practice of both professions.

But isn't it virtually impossible for any one person to continue to be well qualified in all the ramifications of law and accounting? Yes! Moreover, we assert that no one person can continue to be well qualified in all the ramifications of either one of the two professions. But we assert with equal confidence that the CPA-attorney is uniquely qualified to perform a distinctive service in the special areas of his choice. He does not profess to range over the total domain of two professions; he does profess special competence in a small sector of each, fortified by a broad view of both.

The fledgling lawyer, fresh from law school, utterly without experience, innocent of knowledge of business and of accounting, is free to practice in any and every branch of the law. However, the CPA-attorney achieves and maintains increased professional competence by supplementing his learning in both disciplines and by years of actual experience in both, through the practice of both professions.

American Bar Foundation, in "The Legal Profession in the United States" (1965), page 1, states: ". . . many lawyers besides practicing law are engaged in other gainful activity." If the dilution of a lawyer's time and energy and skill—by his engaging in the practice of accounting—requires that he choose one and quit the other, must not a like choice be required of the lawyer who engages in public service, or farming or abstracting, or any of a host of other activities? Similarly, if the dilution of a CPA's time and energy and skill—by his engaging in the practice of law—requires that he choose one and quit the other, must not a like choice be required of the CPA who engages in the widely heralded field of management services? If we equate

dual activity with dual incompetence, then similar results must flow in many fields other than CPA-attorney practice. But it does not follow, and it is not so, that duality means incompetency. It often means the opposite.

WHO WILL STRAIN THE QUALITY OF SERVICE?

Even if it be assumed that the dual practitioner may not be competent to practice and that the public is not competent to choose, what then?

Would the ABA and the AICPA either jointly or separately establish and maintain adequate standards of professional competence? Could they police the competence which the practitioner ought to have, and undertake to use, not only on entering practice but also from day to day and year to year? Doesn't competence today disappear tomorrow on failure to keep abreast of difficult and varied professional developments? The answer is that such policing of postlicensing competency cannot be adequately achieved, for who among lawyers and who among CPAs will have the time, ingenuity and talent to set the standards and then see that they are maintained and met? By what authority? How applied? How tested? How enforced?

And if applied to the 3,000 or so CPA-attorneys, like standards and their maintenance must be applied with equal thoroughness, uniformity and rigor universally to the 250,000 lawyers as lawyers and to the more than 90,000 CPAs as CPAs. Is each lawyer, as lawyer, to be deemed competent to practice in the entire domain of the law, and is each CPA to be deemed competent to practice in the entire domain of accountancy? Is not competence of that magnitude virtually impossible? Or is each lawyer, then, and each CPA, to be required to fix the limits of his intended practice, and to be tested as to his initial competence in those areas and policed in the maintenance of that competence? How is the measure and how is the area of that competence to be communicated to the public so that it may choose appropriate professional representation?

We have no such utopian illusions, however much we would like to realize them. Therefore, we conclude that the question of postlicensing competency cannot be applied as an objection to the dual practice of law and accounting.

Competency can be tested only in the public arena where the competent thrive and the incompetent are rejected. Most important, adequate remedies exist to censure the errant.

ADVOCACY VS. IMPARTIALITY; PRIVILEGED COMMUNICATIONS; INDEPENDENCE OF THE CPA

These points will not detain us long. None of them touches at all on the *right* or wisdom to engage in dual practice. They do, however, merit our consideration, because they are important problems which currently confront the accountancy profession.

Advocacy vs. impartiality: Is the lawyer only an advocate, while the CPA is an impartial finder and reporter of facts? The modern reality is that both lawyer and CPA are required to exercise both advocacy and impartiality. The American Bar Foundation, in *The Fundamentals of Legal Drafting* (1965), stresses on pages 3 and 154 that advocacy is now the lesser of the lawyer's functions; and, to the same effect, see American Bar Foundation, "The Legal Profession in the United States" (1965), page 10. The lawyer frequently is not an advocate when he certifies title to real estate, or when he certifies the legal validity of a bond issue, or when he submits his opinion letters to comply with SEC requirements, etc. No lawyer can have a one-track mind, dedicated wholly to advocacy.

Similarly, as to the CPA: Tax practice demands of the CPA (and of the lawyer, as well) faithful impartiality in reporting, and also a high order of advocacy, to maintain and defend a choice among competing concepts—at times in accounting and at times in law. Then, purely in the domain of accountancy, the CPA must make choices among competing accounting concepts and then staunchly defend his choice.[2]

Privileged communications: Where the point is likely to be vital, the client would be best advised to seek a specialist in criminal law, be the specialist his regular counsel or a CPA-attorney. In consequence, it will be the CPA-attorney who is not sufficiently versed in criminal law who will suffer, not the interest of the client. The risk of nonprivilege is minimal, in view of the CPA successes in the tax field. In any case, we deal here with aspects at the periphery, not at the heart of the problem, and we should be careful not to overstate the limitations of the CPA as to privileged communications nor to overstate the extent of the privilege with respect to attorneys.[3]

Independence of the CPA: There is a duality to independence, the appearance thereof and, more important, the actuality or substance of it. True independence is the spirit rather than the letter, requires reality rather than rules, and lies in the morality of the person. Conflicts appear in both professions.

The lawyer, frequently an advocate, must take on an independent attitude to certify or to give opinions on titles, SEC matters, or to validate corporate resolutions or bond indentures and so on.

The accountant's dualism (duty to properly attest and to properly advocate) appears in responsibility to management, in choosing among applicable accounting principles and statement presentations, in tax matters, etc.

Every professional has multiple roles and, if he has high moral values and professional standards, objectivity will prevail. Professional ethics are not raised by multiplying detailed prescriptions. Independence itself often results in "exception" reports, and a true conflict is solved by withdrawal. The mere weight of educational prescriptions, professional literature and contact with AICPA pronouncements causes the CPA to evidence professional concern, rather than casualism. That small inner voice, the conscience, is also a primary guidepost.

The renowned Thomas G. Higgins aptly covered the problem by stating: "Certainly a CPA's independence is not suspect as a result of his giving advice of any kind to his client in the same sense that it might be suspect if he were a director or held a financial interest in the client."[4] Certainly then, advice by a CPA and/or lawyer does not influence the professional concept of independence.

If the AICPA moves toward restricting or suppressing the dual practice, it must, by stronger reasoning, move to restrict or suppress CPA management services.[5]

The theme is neatly summarized, in its several aspects, by the immediate past AICPA president, Robert M. Trueblood, in his speech before the 1966 annual meeting of the Pennsylvania Institute of Certified Public Accountants on "Independence, Objectivity, Integrity."

> Obviously, no CPA can split himself into two persons—one an advocate, the other an attestor. But he *can*, I believe, always keep in mind his professional duties in both roles, and he *can* discharge his responsibilities in both instances honestly and fairly. But the individual himself must decide when and where his dual roles might conflict, and he must sometime make his choice of one or the other. But specified rules will probably not be of much use. . . .
>
> But again it is not only accountants who have multiple roles. *The lawyer does.* Almost every professional does. . . . (Emphasis supplied.)
>
> Earlier, I said that I felt the present degree of concern about CPAs' independence was somewhat overdone. . . .
>
> We must not, however, become so engrossed in grappling with technicalities that we neglect the *heart of the matter.* And the heart of the matter and the heart of our practice is the individual CPA's moral attitude and his personal integrity.[6]

Would the CPA wish the public to believe that the typical lawyer is not so much concerned with his "moral attitude and his personal integrity" as is the CPA?

JOINT CONFERENCE

In December 1966, W. D. Sprague, CPA, and Arthur J. Levy, attorney, coauthored an article[7] questioning whether dual practice is in the public interest. Although writing as individuals, these gentlemen are the co-chairmen of the National Conference of Attorneys and Certified Public Accountants, and they are so identified in the article. The reader should, however, clearly understand that the views expressed in that article are not official, nor are they the policy of that august committee, the AICPA, nor, as explained under the caption "The Question of Ethics," page 43, those of the American Bar Association, which has not yet adopted an official policy. However, in view of the concern of the joint conference with the dual practice question, it is submitted that CPA-attorneys should participate in these deliberations. Look at the benefits that might result.

As both professions stake out jurisdictional claims to practice in newly created areas (i.e., data processing input control and confidential relationship; employment of experts in one field by the other) or continue to resolve jurisdictional disputes over the right to practice in existing areas such as estate planning, pension and profit-sharing planning and implementation, determinations of where only one or both professions should function will become increasingly important.

The CPA-attorney is the vehicle for transversing those difficult areas where disagreement and conflict arise over the jurisdiction of each profession.

Accounting has been fostered as an art, a technique, utilizing scientific applications where appropriate, and borrowing heavily from other spheres of knowledge, be it law, industrial engineering or mathematics. Accounting, then, is a socially dynamic discipline, growing in a geometric progression as our economy expands.[8] The accountant, however, shares his area of activities extensively with non-CPAs. How unlike the law, where lawyers define what is the law and what is unauthorized practice of the law. In accountancy there is no unauthorized practice except possibly the certification of financial statements.

Even certification is not always retained exclusively as the CPA's function. For example, by statute in Tennessee lawyers may also "certify" financial statements.

Thus, CPA-attorneys, having a joint perspective of the problems between the two professions, can be instrumental in reconciling disparate viewpoints. They should be encouraged to participate

in the activities of the National Conference of Lawyers and Certified Public Accountants.

At this time, no CPA-attorney is a member of the conference.

THE QUESTION OF ETHICS

Every article written on the subject of dual practice has stressed that the ethical propriety of concurrent practice of law and accounting has been the major concern of the professional societies. In this article it has been urged that the benefit to the public gauged by the utilization of skills fostered by CPA-attorneys is the only applicable criterion. However, to cover our subject matter properly, the "ethics" involved will be reviewed at this juncture.

The original thrust of the critics of dual practice has been that such conduct is unethical, being tantamount to advertising, self-laudation, touting, reprehensible feeder, improper solicitation, practice of a specialty (and even unfair competition). In their proper perspectives, these are not applicable arguments nor are they justification for attempts to eliminate CPA-attorney practice. Curiously, the applicable ABA Canon of Ethics, numbered 27, and the AICPA Code of Professional Ethics are virtually the same, stating in effect that it is unprofessional to solicit clients directly or indirectly. Virtually every state incorporates these rules. Accordingly, anyone advocating that dual practice is automatically unethical is imputing a paradox and an anomaly for these reasons: If the practitioner is acting *qua* lawyer, an ethical standard of conduct is applicable, and, if he is acting *qua* CPA, a similar standard is applicable: therefore, when the functions of CPA-attorney merge in one individual, the same ethical standard is applicable. Unfortunately, the CPA profession has lagged in clearly convincing others that its preclusions against advertising and touting are even more stringent than those contained in the lawyers' Canons of Ethics. In New York the State Commissioner of Education recognizes the propriety of a CPA's practicing another profession and his recently amended regulations incorporate this factor.[9]

The American Bar Association Committee on Professional Ethics in 1961 issued its Opinion 297, which held that "dual holding out" is improper advertising and thus unethical. This eight-man committee report is not an official policy of the ABA since it was never approved as a "resolution" by its Board of Governors, its House of Delegates or its membership. Until recently some opponents of 297 have been accepted as ABA members despite their stated opposition to the opinion. Even the advocates of 297 have second thoughts about their interpretations under the existing applicable Canon 27. In February 1965, the Committee on Professional Relations, reporting to the ABA Board of Governors, conceded that "there is some question whether the language of the Canon of Ethics is as clear as it might be in dealing with (the dual practice situation). For that reason, this committee has brought the matter to the attention of the Special Committee on Evaluation of Ethical Standards."[10] Furthermore, being *identified* as a member of another recognized profession is not advertising or self-laudation or touting (which, in the historic sense, means wearing a sandwich-type sign). Every practice feeds, be it on reputation, service or good works. What must be eliminated is blatant solicitation, but that does not exist by virtue of being called CPA, attorney, or CPA-attorney. Lawyers generally cannot presently hold themselves out as "specialists," but accounting is not a specialty of the law (see also the discussion on specialization further on in this article, page 44).

Related to the ethics problem is the efficacy of the 297 advocates to enforce suppressions against any dual practitioner who may well have constitutionally protected rights. A "committee" cannot disbar what the sovereign has licensed. This would be repugnant to requirements of due process and equal protection of the laws. Furthermore, such attempted limitations by an organized association might be estopped as restraints against fair trade and possibly be subjected to antitrust action as well as actions for libel and damages. These problems are mentioned, but their development is beyond the scope of this presentation.

A recent study by the American Association of Attorney-Certified Public Accountants, Inc., an organization which is committed to advancing the concept of dual practice, indicates that in 29 states (and the District of Columbia) concurrent practice is either affirmatively approved by the Bar committees or is not regarded as an appropriate area of challenge in the public interest. Significantly, two of these states acted in 1966 to reverse prior opinions opposing dual practice. In 7 states, the committees are undecided, and in the 14 or 15 states where 297 is favored, few have attempted to implement the opinion. The ABA itself, as noted earlier, has never taken steps to enforce 297 and has indicated to the writer that no complaints have been made to it against any dual practitioner.

The American Institute of CPAs has taken a definite position with respect to dual practice, stating in 1946 "that the practice of law was not incompatible or inconsistent with the practice of public accounting."[11] The Institute has adhered to that position to the present time. Acquiescence on this point for over twenty years is at least persuasive that the practice has not been unauthorized. No state society of CPAs has ever issued opinions de-

nouncing dual practice, although the question has been considered in several areas. Two years ago the Massachusetts Society of CPAs inquired of the AICPA whether dual telephone listings were objectionable and were informed that in and of itself there is no impropriety in being listed as a CPA and also as an attorney. In Texas where the State Joint Conference advocated a ruling critical of dual practice, the CPA society, after independent reflection, declined to follow the Bar's lead in issuing any opinion against dual practice. As recently as October 1966, the New York State Society of CPAs found no impropriety in a CPA firm partner's conducting a separate and distinct practice as a lawyer.

ABA Opinion 297 is unsupported by any citation or authority; none exists, so far as can be determined. Therefore, it is submitted that the proponents of 297 advocate an unpopular, illogical and improper view.[12]

SPECIALIZATION

Dual practitioners do not urge recognition as a specialty. We do urge, however, that identification is proper.

This subject is widely debated within the professions and many believe that it is prevalent *de facto* though not yet *de jure*.

There are clear voices in the accounting profession advocating the disciplines of management accounting, independent auditing, specialized industrial accountability, taxation, the theory of cybernetics and, in time, other areas.

> It is generally recognized within the profession of accountancy that proficiency in all areas of service is difficult for each CPA to attain. As the roles of the practitioner expand beyond traditional . . . functions . . . that clients will require . . . it seems inevitable that these services will be provided by co-operative exchange of information and referral between members. The Society should promote affirmatively the concept of referrals. . . . When he is requested by his clients to perform a function beyond his sphere of competence, it is his duty to inform the client of that fact so that a practitioner with the required special capabilities may be engaged. . . .[13]

The official policy of the AICPA endorses specialization:

> The complexities of an industrial society encourage a high degree of specialization in all professions. The accounting profession is no exception. Its scope is so wide and varied that many individual CPAs choose to specialize in particular types of service.
>
> Although their activities may be diverse, all CPAs have demonstrated basic competence of professional quality in the discipline of accounting. It is this which unites them as members of one profession and provides a foundation for extension of their services into new areas.[14]

Similarly, potent voices within the Bar are also currently sponsoring concepts of specialization: "Certainly these are times when, in the interests of the client and from the standpoint of his own economics, the general practitioner should refer a client to a specialist."[15]

"We have come to an era of specialization of the Bar," Judge Wyzanski, Jr., assures us in his magnificent book, *Whereas—a Judge's Premises*.[16] And the ABA President, Orison S. Marden, writes, "Our twenty sections are principally concerned with assisting practicing lawyers to become expert in their respective fields."[17]

However, we recognize that until the professions are ready to follow the lead of the medical profession (and many other callings) and to promulgate generally accepted standards, limitations and definitions, it would be improper to claim status as a specialist or expert.

Accounting is not a "speciality" in the law. Nor is law a specialty in accountancy. Each is an independent, legally recognized, strictly governed profession, entitled to its own separate and distinct identification.

The distinction between specialization and identification emerges with clarity when we recall that the National Conference of Lawyers and Certified Public Accountants, in its joint 1951 "Statement of Principles," agreed that:

> An accountant should not describe himself as a "tax consultant" or "tax expert" or use any similar phrase. Lawyers, similarly, are prohibited by the Canons of Ethics of the American Bar Association and the opinions relating thereto, from advertising a special branch of law practice.

The AICPA has adopted the full text of the foregoing section, adding the express provision that any violation invites expulsion or suspension from the Institute.[18] At the same time, the AICPA adheres to its position that dual practice is not incompatible.

Hence, the distinction is clear: Identification of a professional practice is not a "prohibited self-designation" of a specialty. The CPA is governed by statutory and professional rules of conduct that parallel those of the Bar; and the concurrent practice is subject to the rules of *both* professions.[19]

The New York County and New York City Bar associations rejected the reasoning of Opinion 297 by ruling that dual designation is not advertising. They expressly recognized the principle that an attorney at law, acting as such, may not by any form or medium of advertising announce to the public

at large that he has a special skill in a particular branch of the law. This prohibition extends to every type of publicity, including legends on office doors, stationery, announcements, letters, circulars, etc.

But the two associations found no impropriety in placing a legend on the office door designating the occupants as both lawyers and CPAs:

> In our opinion, the proposed legends on the office door would merely identify the firms occupying the premises and the professions practiced by them therein, and would not constitute either advertising or solicitation.[20]

In brief, identification does not represent the advertisement of a specialty.

Conceivably the question of specialization may be applicable at some future date. Suffice it to say that we do not urge it at the present time. Curiously, C. Aubrey Smith, Professor of Accounting at The University of Texas, speculates on this point in his treatise, "Accountancy: Circa 2000 A.D."[21] After noting that our society is designed to increasingly stimulate efficient service through special areas of competence, he forecasts that, by the year 2000, "The power heads in both accounting and legal organizations, however, finally got together and formed the Institute of Tax Practitioners to include both lawyers and certified professional accountants"—Query: Will the AICPA encourage or oppose this trend?

THE PUBLIC, PROTECTION AND FREEDOM OF CHOICE

Dual practice has thrived, because the public, blissfully unaware of any proposed indictment of it, is pleased to find in one office an intensified view and prompt remedial solution to its problems without multiple engagements or fees.

The small businessman, or anyone else, may choose the dual practitioner, or not—whatever is best suited to his needs. Others may think and choose otherwise, rejecting the CPA-attorney both in law and in accountancy as being not well enough qualified in either. Those who prefer "two heads instead of one" are free to hire and pay for two heads. The public has freedom of choice and the public exercises that right; the lawyer, or the CPA, or the lawyer-CPA must stand or fall, prosper or fail, on his competence to satisfy the public need. If there is incompetency (be it by the dual or the sole practitioner), the law provides remedies.[22]

The need of the public to be protected in its right to select qualified services is as great as the public need to be safeguarded against incompetence and unlawful practice. Businessmen generally have achieved an awareness of the need to enlist both legal and accounting thought as aids to solution of their problems; they will not view with sympathy any effort by either profession to deprive them of direct and full access to the talents of both, either singly or in combination. On a similar theme, in *United States* v. *American Medical Association*, 110 F 2nd 703, 712, 713, cert. den. 310 US 644,[23] the court succinctly stated its concern for the public weal in matters such as this:

> . . . restraints prohibited . . . are those which unduly hinder a person from employing his talents . . . in any lawful undertaking and thus keep the public from receiving . . . services as freely as it would without such restraints.

After many years of study, one member of the National Conference of Lawyers and Certified Public Accountants, writing to another member of the National Conference, summarized the entire theme:

> When the subject gets in the area of the public interest, I find only one argument that seems to me to have any significance. This is the fact that a man possessing the skills of the two professions ought to be able to serve a client better and possibly do so at less cost to the client. Any other arguments that I have ever heard seem to tie to selfish interests of one profession or the other.[24]

To a like effect, Percival F. Brundage, past president of the AICPA and former Director of the Budget, remarked:

> In his practice a CPA can give his client the best service by a willingness to consult freely with representatives of other professions in any overlapping fields unless he is also officially qualified in that other profession. In that case I can see no detriment to the general public nor conflict with our rules of professional conduct if he practices within his field of specialization even if it falls within the range of two professions.[25]

The primary point remains: The public must be allowed complete freedom of choice of the professional representation it desires. Does the lawyer or the CPA shrink from the free competition of the professional marketplace? Would he reverse the law of natural selection, the survival of the fittest?

CONCLUSION

To become a CPA-attorney takes about ten years, which is the time generally needed to become a licensed M.D. This rigidity of effort and advanced training enables only a few highly motivated to prevail. Darwin's law of survival of the fittest urges a conclusion that a high correlation exists between effort and ability. Dual practitioners are subjected doubly to similar ethical standards, and their conduct must be so construed. As for competency, they

have prospered and their numbers have multiplied —which indicates public demand and acceptance.

Should CPA-attorney practice be precluded because some time, somewhere, someone may be derelict in fulfilling his professional obligations? Isn't incompetency lessened, not intensified, by advanced knowledge? If there are to be guidelines and rules to police certain occurrences, then, by all means, if it is the consensus of the profession, do so! But a blanket preclusion to de-license or disbar from practice is unconscionable and illegal.

No accountant, no lawyer can profess to range over the total domain of his respective profession. However, the CPA-attorney with a broad and fortified view of both can and does profess a special competence in a small sector of each, all to the ultimate public good. Hopefully, the profession will motivate more practitioners to achieve this ability to render dual service.

> A learned profession is never less of a profession for being more learned, and a member of it loses no standing because he possesses special learning. . . . those who are thoroughly qualified in particular fields [should] be identified and recognized.[26]

As Robert M. Trueblood remarked in his valedictory address to the AICPA, "We must be prepared —while remaining faithful to the traditions of our profession—to be bold in experimentation, receptive to new ideas, impatient with dogma which impedes our ability to adjust to the realities of our time."

It follows that the Institute can do no less than reflect, take cognizance and proceed to project the concepts of dual practice. The rest is commentary.

FOOTNOTES AND REFERENCES

1 Official Decisions and Releases department, p. 171.

2 See Louis S. Goldberg, "Dual Practice of Law and Accountancy: A Lawyer's Paradox," *Duke Law Journal*, Winter issue, 1966, pp. 117-141, as well as the remarks of Robert M. Trueblood, AICPA president for 1965-66, which are presented later in this article under the caption "Independence of the CPA," pp. 41-42.

3 See Goldberg, *op. cit.*, p. 134 and the numerous citations there.

4 "Professional Ethics: A Time for Reappraisal," JofA, Mar.62, p. 29.

5 See Opinion No. 17 (AICPA committee on professional ethics); John L. Carey and William O. Doherty, *Ethical Standards of the Accounting Profession*, AICPA, 1966, p. 214.

6 *CPA*, Sept.66, pp. 6-8.

7 "Accounting and Law: Is Dual Practice in the Public Interest?" JofA, Dec.66, p. 45.

8 See "Accounting—A Social Force," AICPA, 1965.

9 Reg. Art. XI Sec. 94-2, May 27, 1965.

10 Vol. 90, Reports, ABA, 1965, p. 233.

11 Official Decisions and Releases department, JofA, Feb.47, p. 171.

12 For a comprehensive study of ethical and other problems, as well as extensive reference to authorities supporting the right to dual practice, see Goldberg, *op. cit.*

13 Ad Hoc Committee on Long-Range Objectives of the New York State Society of CPAs, "Statement of Long-Range Objectives," January 14, 1966.

14 From a statement approved by Council, at its October 1, 1966, meeting, as an official statement of policy of the AICPA.

15 Remarks of ABA President-Elect Earl F. Morris at the August 1966 ABA annual meeting.

16 Little, Brown & Co., 1965, p. 224, *et. seq.*

17 *ABA Journal*, September 1966, p. 843.

18 Opinion No. 5, AICPA committee on professional ethics.

19 Goldberg, *op. cit.*, p. 128.

20 *Ibid.*, p. 135.

21 *The Accounting Review*, January 1954, pp. 64-71.

22 See the annotation, *American Law Review*, 2nd 823, 1964 on incompetence as ground for disciplinary action. See also Goldberg, *op. cit.*, p. 132.

23 See also *Hawkins* v. *North Carolina Dental Society* (1966) Ca-4, 355 F 2nd 718.

24 To like effect, see 63 *Harvard Law Review*, 1457, 1458 (1950). See also Goldberg, *op. cit.*, p. 131.

25 *Better Accounting Through Professional Development*, Proceedings of the 65th Annual Meeting of the AICPA, 1952, p. 122.

26 Harrison Tweed, "The Changing Practice of Law: The Question of Specialization," *ABA Journal*, May 1962, p. 423.