Discouraging the Dual Practice of Accounting and Law: Is This a Valid Exercise of the State's Power to Regulate the Legal and Accounting Professions?

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DISCOURAGING THE DUAL PRACTICE OF ACCOUNTING AND LAW: IS THIS A VALID EXERCISE OF THE STATE’S POWER TO REGULATE THE LEGAL AND ACCOUNTING PROFESSIONS?

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I. INTRODUCTION

The need for the services of both accountants and lawyers is well established in virtually all sectors of our economy. Traditionally, one who seeks such services will contact practitioners who devote most of their working hours to either accounting or law. The number of individuals trained and licensed in both professions, however, is increasing. The possibility of a person simultaneously representing himself to the public as an accountant and a lawyer has caused concern within each profession. The purpose of this article is to examine the state of the law regarding the dual practice of accounting and law and to evaluate the arguments both for and against allowing the dual practitioner to convey the nature of his practice to the public.

Basic to this analysis are the definitions of accounting, accountant, law, and lawyer. Accounting is defined as “[t]he art of recording, classifying, reporting, and interpreting the financial data of an organization.” According to the National Conference of Lawyers and Certified Public Accountants, a certified public accountant (CPA) is “a person trained and expert in accounting who has passed a uniform examination and, by this demonstration of competency and by meeting other requirements, has been certified as such by a state board.” Unless otherwise specified, the term “accounting” refers to activities of a CPA as opposed to the accounting services offered by noncertified public accountants. Law is defined as “[t]hat which must be obeyed and followed by citizens, subject to sanctions or legal consequences . . . ,” while a lawyer is defined as “a person expert in law who has passed the bar examination and,

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by this demonstration of competency and by meeting other requirements, has been admitted to the bar."4

This article is divided into three major topics. First, an examination is made of the accounting profession's Code of Professional Ethics and the legal profession's Code of Professional Responsibility to determine the restrictions which are placed upon one who wishes to practice simultaneously in both professions. Second, the provisions of the United States Constitution which grant or restrict the power of the states to regulate the two professions are analyzed. For the purpose of this analysis, a hypothetical situation is posed and the various constitutional considerations are discussed in the context of this hypothetical. Last, competing policy considerations which have been espoused by different commentators are reviewed and evaluated.

II. ETHICAL CONSIDERATIONS

A. The Accounting Profession

The accounting profession, through the American Institute of Certified Public Accountants (AICPA), has attempted to discourage the dual practice of accounting and law in several ways. If one scanned the Rules of Conduct of the AICPA Code of Professional Ethics looking for limitations in this area, the caption that would most likely catch one's eye is "Rule 504—Incompatible occupations." Rule 504 states, "A member who is engaged in the practice of public accounting shall not concurrently engage in any business or occupation which impairs his objectivity in rendering professional services or serves as a feeder to his practice."5 This language is not specific; therefore, it is subject to official interpretations. The AICPA's interpretation of Rule 504,6 however, merely restates the rule and reiterates parts of other rules relating to acts discreditable to the profession,7 to solicitation,8 and to confidentiality of client information.9 Furthermore, none of the current 173 ethics rulings address the issue of the dual practice of accounting and law in terms of their being "incompatible occupations."

4. NATIONAL CONFERENCE OF LAWYERS AND CERTIFIED PUBLIC ACCOUNTANTS, supra note 2, at 9.
6. Id. Interpretation 504-1.
7. Id. Rule 501.
8. Id. Rule 502.
9. Id. Rule 301.
This lack of guidance for the dual practitioner is not a result of the AICPA's 1973 revision of its Code of Professional Ethics. The predecessor to Rule 504 was Rule 4.04. There were at least 16 informal opinions issued by the AICPA's Committee on Professional Ethics specifically concerning Rule 4.04 and incompatible occupations. None of these opinions addressed the accountant and attorney in dual practice.

The limitations which have been placed on the dual practitioner by the accounting profession have come indirectly through its antisolicitation provisions. One of the questions presented was whether a CPA who is also a lawyer may list himself in the certified public accountant section of the yellow pages as a "tax attorney." It was determined that the designation "tax attorney" would be a violation of Interpretation 502-3 because it associates a CPA's name with a designation indicating the special skills he possesses or the particular services which he is prepared to render. This ruling does not answer the dual practice question since it actually was directed to the issue of the designation of a specialty.

One of the AICPA's most severe limitations on the dual practitioner was also in the context of the antisolicitation rule as it applied to a firm's stationery. At issue in the ethical ruling was whether a CPA who was also admitted to the bar could represent himself on his letterhead as both an attorney and a CPA. It was affirmatively stated that the Code does not prohibit the simultaneous practice of accounting and law by one licensed in both professions; however, it was determined that separate letterheads should be used. Thus, while not prohibiting dual practice, the AICPA has effectively limited the dual practitioner's ability to communicate the nature of his practice to the public.

12. AICPA Code, supra note 5, Rule 502.
17. A.I.C.P.A. PROF. STAND. (CCH) ¶ 591.155, Ethical Rulings on Other Responsibilities and Practices, No. 78 (March 1, 1973).
B. The Legal Profession

The dual practice of accounting and law has also been viewed with disfavor by the legal profession. There was no canon in the former American Bar Association Canons of Professional Ethics which expressly prohibited an attorney from simultaneously practicing in another profession or engaging in any given occupation or business. As early as 1932 in Opinion 57,\textsuperscript{18} however, the Committee on Professional Ethics of the ABA expressed doubts concerning a lawyer's engaging in certain other callings. The Committee stated that it was improper for a lawyer to engage in business activities when they were of such a nature or were so conducted as to be inconsistent with his duty as a member of the Bar.\textsuperscript{19} It was further held to be improper for a lawyer to engage in any business which furnished its patrons with services which would be professional services if rendered by a lawyer.

In the only part of Opinion 57 which was actually specific, the Committee stated that it was improper for a lawyer to devote a portion of his time to the management of an insurance adjuster's bureau. It reasoned that the investigation and adjustment of insurance claims frequently led to litigation, and that the solicitation of business by a bureau handling the adjustments was, as a practical matter, a means of procuring professional employment for any lawyer in general practice who might be interested in or connected with it.

There have been several opinions handed down since Opinion 57 on the subject of dual occupations. These are enumerated in Opinion 328.\textsuperscript{20} It should be noted that each of these prior opinions by the Committee on Professional Ethics was rendered before the adoption of the 1969 Code of Professional Responsibility or the 1978 amendments to them. Opinion 328 was the first ruling on the matter of dual occupations by the Committee after the adoption of the 1969 Code.

In Opinion 328\textsuperscript{21} the Committee noted that the terms "indirect solicitation" and "feeding a law practice" had been omitted from the 1969 Code of Professional Responsibility. The Committee interpreted this omission as an intention on the part of the Code's draftsmen to refuse to rely on those vague phrases as standards by which to judge the outside activities and occupations of lawyers. It was

\textsuperscript{18} ABA Comm. on Professional Ethics, Opinions, No. 57 (1932).
\textsuperscript{19} Id.
\textsuperscript{20} ABA Comm. on Professional Ethics, Formal Opinions, No. 328 (1972).
\textsuperscript{21} Id.
stated that "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 provision of the code."\textsuperscript{22} Using this method of analysis, the Committee based Opinion 328, which was issued in August 1972, on the unamended Disciplinary Rule (DR) 2-102(E).\textsuperscript{23}

The Committee determined that a lawyer may simultaneously hold himself out as an accountant and an attorney as long as the attorney does not violate DR 2-102(E). DR 2-102(E) provided the following: "A lawyer who is engaged both in the practice of law and

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\item \textsuperscript{22} Id.
\item \textsuperscript{23} The pertinent part of DR 2-102 was amended to read as follows:

Professional Notices, Letterheads, and Offices:

(A) A lawyer or law firm shall not use or participate in the use of professional cards, professional announcement cards, office signs, letterheads, or similar professional notices or devices, except that the following may be used:

(1) A professional card of a lawyer identifying him by name and as a lawyer, and giving his addresses, telephone numbers, the name of his law firm, and any information permitted under DR 2-105. A professional card of a law firm may also give the names of members and associates. Such cards may be used for identification.

(2) A brief professional announcement card stating new or changed associations or addresses, change of firm name, or similar matters pertaining to the professional offices of a lawyer or law firm, which may be mailed to lawyers, clients, former clients, personal friends, and relatives. It shall not state biographical data except to the extent reasonably necessary to identify the lawyer or to explain the change in his association, but it may state the immediate past position of the lawyer. It may give the names and dates of predecessor firms in a continuing line of succession. It shall not state the nature of the practice except as permitted under DR 2-105.

(3) A sign on or near the door of the office and in the building directory identifying the law office. The sign shall not state the nature of the practice, except as permitted under DR 2-105.

(4) A letterhead of a lawyer identifying him by name and as a lawyer, and giving his addresses, telephone numbers, the name of his law firm, associates and any information permitted under DR 2-105.

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\item \textit{In re: Amends. to the Code of Prof. Resp. and Canons of Jud'l Ethics, 263 Ark. 948, 957-58 (1978) (per curiam).} DR 2-105 was also amended as follows:

Limitation of Practice:

(A) A lawyer shall not hold himself out publicly as a specialist or as limiting his practice, except as follows:


(2) A lawyer who is certified as a specialist in a particular field of law or law practice by the Supreme Court of Arkansas or its designee may hold himself out as such, but only in accordance with the rules prescribed by that authority.

\textit{Id. at 964-65.}"

\end{enumerate}
another profession or business shall not so indicate on his letterhead, office sign, or professional card, nor shall he identify himself as a lawyer in any publication in connection with his other profession or business." Thus, an attorney/CPA is allowed to practice both professions from the same office, but he cannot indicate this on his letterhead, office sign, or professional card. It would be reasonable for one to suggest that the ostensible acceptance of the dual practitioner by the ABA is of dubious value when the practitioner's ability to communicate the nature of his practice is severely curtailed.

III. CONSTITUTIONAL ISSUES

A. The State's Power of Regulation

The practice of law is so intimately connected with the exercise of judicial power in the administration of justice that the right to define and regulate the legal profession naturally and logically belongs to the judicial department of the state government. While the final authority for regulation of the legal profession usually rests with a state supreme court, most states have legislatively estab-

24. ABA Code of Professional Responsibility, DR 2-102(E) (as amended Aug. 1976). The language used in the amended version of DR 2-102 does not change the effect of the prior rule with respect to the dual practice of law and accounting. The dual practitioner is precluded by DR 2-102 and DR 2-105 from specifying the nature of his dual practice on his letterhead and office door or in a professional notice. See the quoted Code in note 23 supra. But see DR 2-101(B)(12) which allows an attorney to publish or broadcast his "[t]echnical and professional licenses." In re: Amends. to the Code of Prof. Resp. and Canons of Jud'l Ethics, 263 Ark. 948, 954 (1978) (per curiam).

25. ABA Comm. on Professional Ethics, Formal Opinions, No. 328 (1972). Not all of the state bar associations have accepted Opinion 328 and its strict reliance on the language in the Code. For example, the Florida Bar Committee on Professional Ethics, while accepting much of Opinion 328, unanimously held that a person who simultaneously practices law and accounting must keep the two practices physically and functionally separate. The Florida committee mentioned but did not discuss the standard argument that the second profession being practiced from the same office leads directly or indirectly to the solicitation of business and the feeding of a law practice. With reference to this argument, the committee stated, "We shall not discuss the validity of this premise but would point out in an era when the profession of law is being challenged on all fronts, we should not recede from an ethical principle which has held the legal professional separate, apart and above others." Thus, the Florida Bar did not base its determination that dual practice is undesirable on the theory of solicitation, but rather indicated that it would be degrading to the legal profession for it to mix itself with other professions. Florida Bar Association Committee on Professional Ethics, Advisory Opinion 73-18 (1973) reprinted in 38 Unauth. Prac. News 86 (1974). But see the North Carolina Bar Newsletter, Jan. 12, 1979, at 1, col. 1, in which a proposed amendment to DR 2-102(E) of the North Carolina Code of Professional Responsibility reads as follows: "A lawyer who is engaged both in the practice of law and another profession, may so indicate on his letterhead, office sign and professional card."

lished state examining boards to aid in the administrative task of licensing attorneys in that particular state.\textsuperscript{27}

The states have a compelling interest in the practice of professions within their boundaries, and, as part of their power to protect the public health, safety, and other valid interests, they have broad power to establish standards for licensing practitioners and regulating the practice of professions.\textsuperscript{28} There are limitations, however, in the states' regulatory powers over these professions.\textsuperscript{29}

Section III B poses a hypothetical situation in which the constitutional issues that affect a dual practitioner of law and accounting are discussed. The fact situation which follows involves neither the problem presented by the division of fees with a non-lawyer\textsuperscript{30} nor the problems attendant to the unauthorized practice of law.\textsuperscript{31} The narrow issue considered is the right of a practicing attorney/CPA to convey the nature of his practice to the public.

B. Hypothetical Situation

The main character in this hypothetical situation is Accountant/Lawyer Albert Smith, who will be called Al for short. Al has passed the CPA exam, has met the experience requirements of the State of Arkansas, and has received his certificate as a Certified Public Accountant in Arkansas. Likewise, Al has passed the Bar examination in Arkansas and has been admitted to the Arkansas Bar.

Al establishes an office from which he intends to offer legal as well as accounting services. In order to make his office identifiable,

\textsuperscript{27} See, e.g., \textsc{Ark. Stat. Ann.} § 25-104 (1962). The statute states that the Supreme Court may appoint a board of examiners, of practitioners in the Supreme Court for each judicial circuit to conduct examination for license, according to a standard adopted by the Supreme Court.


\textsuperscript{29} See, e.g., Bates v. State Bar of Ariz., 433 U.S. 350 (1977). Many of the challenges to a state's power to license attorneys relate to the setting of qualifications for admission to the various state bar associations. It has been stated that the ultimate purpose of all regulation of the admission of attorneys is to assure the courts of the assistance of advocates of ability, learning, and sound character and to protect the public from incompetent and dishonest practitioners. See, e.g., Henington v. State Bd. of Examiners, 60 N.M. 393, 291 P.2d 1108 (1956), in which the court held that a bar examining committee did not exceed its powers or act unreasonably in establishing as one of the requirements for admission to the bar the graduation from a law school approved by the American Bar Association. The court also found the establishment of reasonable education qualifications for admission to the bar does not violate the fourteenth amendment of the United States Constitution in regard to either the due process clause or the equal protection clause.

\textsuperscript{30} \textsc{ABA Code of Professional Responsibility}, DR 3-102(A) (as amended Aug. 1976).

\textsuperscript{31} \textit{Id.}, DR 3-101.
Al acquires a modest sign to attach to his front door which reads:

A. L. Smith
Attorney at Law
Certified Public Accountant

Al also obtains business cards and office stationery with similar designations and which include his address and phone number. Some time after the initiation of his practice, the Grievance Committee of the State Bar Association notifies Al that a complaint has been filed alleging that he has violated DR 2-102(A)(3). Al also receives a notification from the State Board of Accountancy that it was reported to them that he is conducting his practice contrary to Ethical Ruling on Other Responsibilities and Practices Number 78. Being convinced of the justness of his cause, Al refuses to comply with the ethical rules; therefore, the Grievance Committee of the State Bar Association revokes his license to practice law and the State Board of Accountancy withdraws his certification. Al is unsuccessful in his attempts to persuade the Arkansas courts that the sanctions imposed upon him are unjust. He now finds himself before the United States Supreme Court in an attempt to save his means of a livelihood.

C. Freedom of Expression

1. The First and Fourteenth Amendments.—The first amendment of the United States Constitution states that, "Congress shall make no laws . . . abridging the freedom of speech . . . ." Based on a literal interpretation of the first amendment, one might believe that it is addressed solely to restrictive acts passed by Congress. In 1907 Patterson v. Colorado presented the United States Supreme Court with an opportunity to decide whether the first amendment prohibition against abridging freedom of speech was made applicable to action by the states through the fourteenth amendment. Although the Court refused to incorporate the first amendment into the fourteenth, Mr. Justice Holmes recognized some limitations on the right of freedom of expression, distinguishing between previous restraints upon publications and subsequent punishment of publications which could be deemed contrary to public welfare.

32. See note 23 supra.
33. Ethical Rulings No. 78, supra note 17.
34. 205 U.S. 454 (1907).
35. Id. at 462.
The Court deviated from its holding in *Patterson* in *Gitlow v. New York.* The first amendment guarantee of free speech was held to be among the fundamental personal rights and liberties protected by the due process clause of the fourteenth amendment from impairment by a state. The statement in *Gitlow* concerning the incorporation of the first amendment by the fourteenth was very succinct. Mr. Justice Sanford, writing for the Court, said,

> For present purposes we may and do assume that freedom of speech and of the press—which are protected by the First Amendment from abridgment by Congress—are among the fundamental personal rights and ‘liberties’ protected by the due process clause of the Fourteenth Amendment from impairment by the States.

The Court therefore applied first amendment guarantees to prohibit certain legislation by the state and made a tremendous constitutional leap. This decision applies directly to the case of Al Smith. It can be concluded that Al’s freedom of speech and expression are protected from state abridgement by the incorporation of the first amendment into the fourteenth.

Another constitutional development occurred in the 1938 case of *Lovell v. City of Griffin.* The United States Supreme Court extended the first amendment guarantees to proscribe certain rules and regulations promulgated by instrumentalities of the state. The

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36. 268 U.S. 652 (1925). The case involved a provision of the New York Penal Law that defined criminal anarchy as a doctrine advocating the overthrow of organized government by force, violence, or by assassination of executive heads or officers or by other unlawful means. The statute further declared that any person who by word of mouth or writing advocated, advised, or taught criminal anarchy, or who printed, published, edited, issued, or knowingly circulated, sold, distributed, or publicly displayed any book, paper, document, or written or printed matter advocating that organized government should be overthrown by force, violence, or unlawful means, was guilty of a felony. The defendant was a member of the Left Wing Section of the Socialist Party. He subscribed to and promoted through certain publications some of their objectives including the overthrow of the United States government through a Communist revolution. In the *Gitlow* decision the Court cast aside a statement in the earlier case of *Prudential Ins. Co. of American v. Cheek,* 259 U.S. 530 (1922), that the fourteenth amendment imposes no restrictions on the states concerning freedom of speech.

37. *Id.* at 666.

38. 303 U.S. 444 (1938).

39. In *Lovell* the instrumentality was the municipality of Griffin, Georgia. The appellant had been convicted of the violation of a city ordinance prohibiting the distribution of circulars, handbooks, advertising, or literature of any kind without a permit. The appellant admitted to engaging in the acts for which she was convicted, but she contended that since the ordinance absolutely prohibited the distribution of literature of any kind within the City of Griffin without the permission of the City Manager, the ordinance abridged freedom of the press and restricted her personally in the free exercise of her religion. The Court restated the *Gitlow* holding that freedom of speech and freedom of the press, which are protected by the first amendment from abridgment by Congress, are among the fundamental personal rights and liberties which are protected by the fourteenth amendment from invasion by the states.
Court held that municipal ordinances adopted under state authority constitute state action and are within the prohibition of the amendment.40

In view of Gitlow and Lovell, Al believes that the revocation of his license to practice law and accounting by the respective state boards provides the “state action” required to invoke the protection of the fourteenth amendment. Finding sufficient state action, Al may argue that Arkansas is infringing on his first amendment rights. The Court has recognized state action in similar situations.41

2. The Dual Practitioner’s Right to Freedom of Expression Balanced Against a State Interest.—Although the words of the first amendment appear unequivocal, it is clear that from the earliest days of our Constitution the words were not absolutes and that there were limitations on the appropriate time and place for certain expressions. Prior to Bates v. State Bar of Arizona42 attorneys were not allowed to advertise or otherwise solicit legal business without strict compliance with the ABA Code of Professional Responsibility.43 Unfortunately Bates did not answer the question of whether an attorney/CPA may indicate his dual practice on his door, letterhead, or calling card. With respect to first amendment interpretation, the question is an important one. An examination of the United States Supreme Court’s decisions balancing state and individual interests provides a background for answering this question.

Because the regulation of the practice of law is generally held to be a matter of state concern, the United States Supreme Court has had few occasions to address the subject. The Court, however, did confront the issue of the power of a state to regulate the practice of law in Cohen v. Hurley.44 In Cohen an attorney was accused of “ambulance chasing.” The Court stated, “It is certainly not beyond the realm of permissible state concerns to conclude that too much

40. Lovell v. City of Griffin, 303 U.S. 444, 450 (1938). Although Lovell is the case most often cited for the proposition that municipal ordinances constitute action by the state, see also Cuyahoga River Power Co. v. City of Akron, 240 U.S. 462 (1916); Home Tel. & Tel. Co. v. City of Los Angeles, 227 U.S. 278 (1913); Raymond v. Chicago Union Traction Co., 207 U.S. 20 (1907).
43. See also DR 2-101(B)(12) quoted in note 24 supra.
44. 366 U.S. 117 (1961). As a practical matter the Court probably would not have granted certiorari but for the posing of the constitutional issue of whether an attorney’s refusal to answer questions during a disciplinary proceeding as to the propriety of his professional conduct could be a per se ground for disbarment. This case was overruled on the issue of the right of an attorney to refuse to answer questions during a disciplinary proceeding. Spevack v. Klein, 385 U.S. 511 (1967).
attention to the business of getting clients may be incompatible with a sufficient devotion to duties which a lawyer owes to the court . . . . "\(^{45}\) The Court, therefore, examined the conduct which the state sought to regulate and determined that there was a "permissible state concern" to justify the regulation.

The crucial point in the analysis of Al's problem is to determine whether there would be a "permissible state concern" that would be contrary to Al simultaneously representing himself as an attorney and as a certified public accountant on his office door or letterhead. No conclusions are reached at this point, but it is questionable whether the state in the exercise of its regulatory power over the legal profession has a permissible concern that outweighs Al's first amendment right to communicate the nature of his practice to others.

In 1963 the United States Supreme Court considered facts that differ somewhat from those currently being examined but which call forth some of the same legal principles. In *NAACP v. Button*\(^{46}\) the Court held that a statute which made it a misdemeanor for a person or organization to solicit legal business for itself or for any attorney was invalid. The Court stated that the NAACP had shown that its activities fell within the first amendment protections and the State failed to advance any substantial regulatory interest, such as the existence of evils which resulted from the activities of the NAACP. Therefore, there was no justification for the broad prohibitions which the State had imposed. Applying this reasoning to the case of our friend Al, it appears that the Court should determine whether the state's regulation of the legal profession is sufficiently narrow and whether Al's first amendment expressions are being suppressed without substantial justification.

Another line of inquiry pertinent to Al's case concerns the degree of interest which a state must have to regulate an activity. It is important to leave the states free to select their own bars, but it is equally important that the states neither exercise this power in an arbitrary or discriminatory manner nor infringe on the freedom of political expression or association.\(^{47}\) A bar composed of lawyers of good character is a worthy objective, but it is unnecessary to sacrifice vital freedoms in order to obtain that goal.\(^{48}\)


\(^{46}\) NAACP v. Button, 371 U.S. 415 (1963). The NAACP's program included advising blacks of their right to integrated facilities, encouraging individuals to commence desegregation litigation, and offering legal and financial assistance for such suits.


\(^{48}\) Id. at 273.
of the United States Supreme Court have consistently held that only a compelling state interest in the regulation of a subject can justify limiting first amendment freedom. A compelling state interest was not found in **NAACP v. Button**. It appears that a compelling state interest does not exist for denying Al the right to simultaneously hold himself out as an attorney and as a CPA. The competing considerations which should be examined in determining whether a compelling state interest exists are discussed in section IV of this article.

3. **The First Amendment Rights of the Recipients of Free Expressions.**—**Brotherhood of Railroad Trainmen v. Virginia State Bar** illustrates the point that the first amendment right of free speech is co-extensive with the right of a person to receive that expression. The Virginia State Bar brought suit against the Brotherhood of Railroad Trainmen seeking an injunction to prevent the Brotherhood from carrying on activities which, the Bar charged, constituted the solicitation of legal business and the unauthorized practice of law in Virginia. The charge was based on the Brotherhood's provision of a Department of Legal Counsel for the member railroad workers. The Court held that labeling the acts of the Brotherhood as solicitation was insufficient to foreclose the constitutional right of the individual workers to obtain legal information.

The Court recognized the broad power of the state to regulate the practice of law within its borders. It pointed out, however, that Virginia was not seeking to halt a commercialization of the legal profession which might threaten the moral and ethical fabric of the administration of justice. Furthermore, the State failed to show any

50. 371 U.S. 415 (1963). See also Brotherhood of R.R. Trainmen v. Virginia State Bar, 377 U.S. 1 (1964), in which attorneys had been recommended by a union to provide legal services for its individual members. It was alleged that such activities amounted to solicitation of legal business. The Court held that a state could not, by involving the power to regulate the professional conduct of attorneys, infringe in any way on the right of individuals and the public to be fairly represented in lawsuits authorized by Congress to effectuate a basic public interest. This case is discussed in greater detail in section III C3 infra.
51. 377 U.S. 1 (1964). The activities performed by the Brotherhood included assisting the prosecution of claims by injured railroad workers or by the families of workers killed on the job. This assistance was rendered by maintaining a Department of Legal Counsel. It is this result which the Virginia State Bar contended amounted to solicitation of legal business. The Court noted that laymen cannot be expected to know how to protect their rights when dealing with practiced and carefully counseled adversaries. Thus, since the railroads certainly had access to able counsel, the workers should be entitled to unite to help one another preserve and enforce rights which had been granted them under various federal laws. The only practical way for the workers to obtain the legal assistance they needed was for their Department of Legal Counsel to advise them of competent and honest lawyers which were available.
appreciable public interest in preventing the Brotherhood from recommending selected attorneys to represent injured workers. Thus, the first amendment right of the individual trainmen to receive the proffered information prevailed.

The issue of the rights of recipients of free expressions was also presented in *Bates v. State Bar of Arizona*. The constitutional question was whether the State could prevent the publication in a newspaper of lawyers' truthful advertisement concerning the availability and terms of routine legal services. Appellants, who were licensed attorneys, were charged with violating the Arizona Supreme Court's disciplinary rule which prohibited attorneys from advertising in newspapers or other media. The Court held that the flow of such information could not be restrained and the application of the disciplinary rule against the appellants was violative of the first amendment. In discussing the problem of misleading advertising, the Court refused to see merit in a justification that was based on the benefits of public ignorance, calling for a remedy of more disclosure rather than less if an advertisement presented an inaccurate picture. The Court gave a detailed summary of its 1976 opinion in *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, stating that the conclusion that Arizona's disciplinary rule was violative of the first amendment could be said to flow a fortiori from this decision. Like the prohibition against advertising of prescription drugs in *Virginia State Board of Pharmacy*, the Court found that the disciplinary rule in *Bates* served to inhibit the free flow of commercial speech and to keep the public in ignorance.

Returning to the situation of hypothetical Al, one should consider the competing interests to determine whether a client or potential client has a first amendment right to be informed of the nature of Al's professional practice. It seems fair to assert that some potential clients would not want to avail themselves of the services

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52. 433 U.S. 350 (1977). See also Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748 (1976) which dealt with the right of a licensed pharmacist to advertise the prices of prescription drugs. At issue was a state statute which declared it to be unprofessional conduct for a licensed pharmacist to advertise prescription drug prices. Members of a consumer group were held to have a First Amendment right in the ability of a licensed pharmacist to transmit price information to the consumers. The majority of the Court, speaking through Mr. Justice Blackmun, stated, "If there is a right to advertise, there is a reciprocal right to receive the advertising, and it may be asserted by these appellees." Id. at 757. See also note 24 supra.

56. Id.
of one engaged in the dual practice of accounting and law. For example, a potential client with a criminal problem might infer that a dual practitioner might not have the experience and expertise to handle his problem. In this and other analogous situations, it seems that a dual practitioner should not only be allowed to properly represent the nature of his practice, but also be required to do so. It appears equally fair to submit that there are persons, such as small businessmen, who might like to obtain the services of a dual practitioner but would be unable to locate one because of the restrictions placed on the manner in which such a practitioner may convey his message to the public.

IV. COMPETING POLICY CONSIDERATIONS

A. Competence in Both Fields

One of the first arguments that surfaces in any discussion of dual practice is the contention that it is difficult for anyone to maintain a high level of competence in both fields. The apparent validity of this argument gives it immediate appeal. Few practitioners who work exclusively as a lawyer or as an accountant, however, are able to maintain a high level of competency in all fields of law or in all areas of accounting, respectively. Most practitioners, therefore, concentrate on one or possibly several areas within the broad disciplines of law or accounting. The choice may be made for the practitioner by his firm, or it may be a result of his own interests. Furthermore, the needs of one’s clients may lead a practitioner to forego undertakings in certain spheres to devote attention to areas in which he is often called upon to render service. Thus, even though part of an attorney/CPA’s practice may be termed law and part of it accounting, the actual scope of his practice may be no broader than one who confines his practice solely to law or accounting.

Implicit in the argument that a dual practitioner cannot maintain competency in both fields is the belief that he should not be allowed to reveal his dual occupation to the public. Once the competency argument is analyzed, it seems logical to allow the practitioner to convey his credentials without restriction. The dual practitioner should not have to choose publication of one profession to the exclusion of the other; therefore, it should be permissible to simultaneously convey that he is both a CPA and an attorney.

B. Economy

It is sometimes contended that dual practice should be allowed because the services of both a lawyer and a CPA may be needed by the small businessman who can only afford to employ one person.\(^5^8\) The argument has greater appeal in small communities where two practitioners, one in each field, cannot find enough business to justify maintaining an office.\(^5^9\)

The "economy" argument is not the most forceful one because of the difficulty in quantifying some of the underlying premises. For example, it has been stated that the dual practitioner could render services for less money than the combined fees of a separate attorney and an accountant, but it has never, to this writer’s knowledge, been empirically established. Nevertheless, it seems that the economic benefit that might be derived from the employment of a dual practitioner is made difficult to obtain because a potential client might not be able to identify a person who is both a CPA and an attorney. The restrictions on the practitioner’s ability to hold himself out to the public as a CPA/attorney impedes the potential client’s discovery of his qualifications.

C. Degree of Solicitation Involved

This issue is phrased in terms of the "degree" of solicitation involved because all professional persons, including lawyers and accountants, solicit to some extent. Whether solicitation is accomplished by joining the local Rotary Club or displaying one’s name in an office building directory, each attorney and accountant makes use of some type of solicitation.

The pertinent question is whether the solicitation being proscribed by refusing to allow a dual practitioner to hold himself out as such amounts to a solicitation of a greater degree than many other activities which are allowed. For example, letterheads may indicate that a firm has offices in different cities, states, and countries. This information may encourage additional legal business because it indicates a capacity to serve the client in other geographic locations.\(^6^0\) Similarly, announcements placed in various law directories, such as Martindale-Hubbell, are allowed to include self-serving information that is considerably in excess of that which is asserted


\(^5^9\) Id.

\(^6^0\) ABA Code of Professional Responsibility, DR 2-102(A) (as amended Aug. 1976).
as proper for the dual practitioner.

Another means by which lawyers and accountants indirectly solicit business is through the retention of the names of deceased former partners. This practice allegedly serves a legitimate need of the public to be able to identify firms on some sort of consistent basis.

None of these means of solicitation is being mentioned in a derogatory manner. On the contrary, each example mentioned serves the significant function of informing the public. No lesser function would be served by allowing a dual practitioner to represent himself as such on his letterhead and office door or in a professional notice.

V. CONCLUSION

It is clear that the accounting profession and the legal profession have discouraged individuals from engaging in the dual practice of accounting and law. Each has done so by restricting the right of a dual practitioner to inform the public of the nature of his practice. The legal profession's prohibition comes through a provision in its Code of Professional Responsibility while the accounting profession's prohibition comes through a ruling by an arm of its professional governing body.

A state has a significant regulatory power over the professions within its boundaries. The state's power to regulate, however, must be tempered by the dual practitioner's first amendment right to communicate the nature of his practice to the public. Furthermore, the public has a right protected by the first amendment to receive the dual practitioner's communication. The key to this issue is whether there is a compelling state interest in prohibiting such communication between the dual practitioner and the public which is superior to their respective rights to communicate and receive such information. In order to establish a compelling interest the state must show that significant evils result from permitting a lawyer/CPA to inform the public of his dual practice. Unless this justification is present, the state's interest in regulating professions is outweighed by the practitioner's and the public's first amendment rights.

In evaluating the state's interest in restricting the simultaneous practice of accounting and law, there are several policy considerations to be weighed. Some of the factors considered indicate that the
dual practitioner may not be able to perform all of the legal services and all of the accounting services that a client may need. In an analysis of this objection to dual practice it was pointed out that few lawyers or accountants practice in all areas of their respective professions. By allowing dual practice, both professions tacitly acknowledge the lawyer/CPA's special skills and permit him to perform dual services. The restrictions are directed solely toward the communication of this joint practice to the public. When the state permits simultaneous practice of law and accounting, it is difficult to find a valid state interest which justifies the restrictions on the communication of such practice to the public.

Recent United States Supreme Court opinions place great importance on the free flow of commercial speech and the public's right to be informed of the nature of services available to them. Any prohibition which restricts this kind of speech without valid and significant reasons is likely to be an unconstitutional exercise of a state's regulatory power. It is submitted that the impediments which presently confront one who wishes simultaneously to practice accounting and law should be removed.