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The Plight of the Attorney-Certified Public Accountant-An Evaluation of a Proposed Code of Conduct

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the *Bush* case a three-judge court was initially convened, and it decided that a three-judge court was not required. As in the *Bush* case the constitutionality of the statute under attack in *Ludley* had not been previously adjudicated. This being so, the district court, having decided preliminarily that a three-judge court was not required because the statute was clearly unconstitutional, was left to dispose of the case for the first time on the merits. Such a procedure is hardly in keeping with the legislative intent in enacting the three-judge requirement. Practical considerations in the administration of three-judge courts may explain this procedure but in the opinion of this writer certainly do not justify a refusal to apply the three-judge statute where it was clearly applicable.

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The Plight of the Attorney-Certified Public Accountant — An Evaluation of a Proposed Code of Conduct

In August 1958 a subcommittee[1] appointed by the American Bar Association Committee on Professional Relations submitted to its parent committee and to the National Conference of Lawyers and Certified Public Accountants, a draft of a proposed Code of Conduct dealing with problems of joint practice and publicity by attorneys and certified public accountants practicing together, and persons possessing dual qualifications. No action has as yet been taken by either committee concerning this proposed Code, for it is desired that the members of both professions be given time to study its provisions and consider their probable effects.

The Proposed Code of Conduct divides the attorney-CPA problem into four sections: (1) the lawyer employed by a CPA firm, (2) the CPA employed by a law firm, (3) partnerships between lawyers and CPAs and (4) the individual who possesses dual qualifications. This Comment will consider only the fourth situation — the problems presented when an individual is both a lawyer and a CPA.[2]

1. This subcommittee was composed of four attorneys: Mr. William T. Gossett, Dean Erwin N. Griswold, Mr. Louis Boxleitner, and Mr. George E. Brand.

2. No attempt will be made to provide a comprehensive review of the prior

In general, the proposed Code provides three reasons why a person having dual qualifications may not engage in the practice of law and accounting at the same time: (1) because such joint practice amounts to indirect solicitation and provides a "feeder" for law practice since legal business would be attracted by the attorney's accounting, rather than solely by his legal abilities;[3] (2) because representation of dual qualifications is a statement of specialization in law, forbidden as a form of advertising;[4] and (3) because the duty of loyalty owed by an attorney to his client would conflict with the CPA's duty of "impartiality." These provisions largely reflect the present position of the Ethics and Grievance Committee of the ABA but would appear to be contrary to the present view of the American Institute of Certified Public Accountants (AICPA).

THE PRESENT POSITION

There have not been any decisions by the courts in this area, and the present positions of both professions regarding the problems of joint practice and the statement of dual qualifications by an individual practitioner are still based on opinions rendered in 1946 by the ABA's Committee on Professional Ethics and Grievances, and the AICPA's[5] Committee on Professional Ethics. A majority of the ABA Committee decided that concurrent practice of both professions, even from separate offices, would violate Canon 27 of the Canons of Professional Ethics of the ABA, as the attorney's accounting activities would "inevitably serve as a feeder of his law practice."[6] A minority of the Committee

opinions of the various Ethics Committees. Excellent summaries may be found in DRINKER, LEGAL ETHICS 219-73 (1953) and Comment, 3 U.C.L.A.L. REV. 360 (1956).

3. "Joint practice by a lawyer-CPA results in indirect solicitation of business to the extent that legal business is attracted by the accounting, rather than the legal proficiences of the individual." Proposed Code of Conduct, as quoted in 9 J. TAX. 198, 200 (1958).

The draft quotes the ABA Committee on Professional Ethics and Grievances, Opinion No. 272 (1946): "[T]hat a lawyer should be precluded from holding himself out, even passively, as employable in another professional capacity . . . . ; that a lawyer, holding himself out as such, may not also hold himself out as a certified public accountant at any office without violating Canon 27, because his accounting activities will inevitably serve as a feeder of his law practice." *Id.* at 200.

4. "Representation to the public by a lawyer that he is a CPA also tends to imply special ability in the law and is objectionable as the representation of a specialty, which is considered another form of advertising." Proposed Code of Conduct, as quoted in 9 J. TAX. 198, 200 (1958).

5. The American Institute of Certified Public Accountants was formerly known as the American Institute of Accountants.

6. ABA, OPINIONS OF THE COMMITTEE ON PROFESSIONAL ETHICS AND GRIEVANCES 565-69 (Opinion No. 272) (1957).

thought concurrent practice permissible if carried on from separate offices with separate stationery.[7] The Committee was in agreement that an attorney-CPA could perform essentially accounting services, as an incident to his law practice, without violating the Canons.[8]

On the other hand, the AICPA's Committee on Professional Ethics decided that the practice of law was not incompatible or inconsistent with the practice of public accounting, and that concurrent practice was not unethical.[9]

The ABA has been firm in prohibiting persons practicing as attorneys from stating their dual qualifications on letterheads, cards, and shingles.[10] This same rule has been applied by the Michigan[11] and the Los Angeles[12] Bar Associations. A somewhat contrary result was reached by both the New York City Lawyers Association and the New York County Lawyers Association, permitting attorneys to state their dual qualifications on their doors, announcements, and calling cards sent only to other members of the Bar.[13] The latter group has subsequently held that it is improper for letterheads and professional cards, other than those sent solely to members of the Bar, to contain the statement, "Attorneys at Law, Certified Public Accountants,"[14] or for a CPA to announce that an attorney-CPA is associated with him in his accounting practice.[15] The New York County Lawyers' Association finds that the current rulings as to letterheads and professional cards are not inconsistent with their former opinion, which remains unchanged, permitting the

7. *Ibid.*

8. *Ibid.*

9. "It must be recognized that in certain specialized branches of professional work, such as tax practice, in which questions of law and of accounting are frequently intermingled, an individual may combine the knowledge and skills of a lawyer and a certified public accountant with advantage to his client." American Institute of Accountants, Opinion of the Committee on Professional Ethics, May 8, 1946, 83 J. ACCOUNTANCY 171-72 (1947). The committee went on to hold that a dually qualified person could be a partner in a firm practicing either profession and at the same time individually practice the other profession without violating the Rules of Professional Conduct of the Institute.

10. ABA, OPINIONS OF THE COMMITTEE ON PROFESSIONAL ETHICS AND GRIEVANCES, Opinions 272 and 115, at 565, 633 (1957). *Cf. id.* Opinions No. 116-129, at 633.

11. Michigan Opinion 124, as cited in DRINKER, LEGAL ETHICS 221 (1953).

12. Los Angeles Bar Association Committee on Professional Ethics, Opinions No. 224, 225, as cited in Comment, 3 U.C.L.A.L. REV. 360, 362, n. 6 (1956).

13. New York City Opinions No. B-118, 667; New York County Opinions No. 388, 407, as cited in DRINKER, LEGAL ETHICS 224, 225 (1953).

14. NEW YORK COUNTY LAWYERS' ASSOCIATION YEARBOOK 221, 223 (Opinions No. 434, 437) (1955).

15. *Id.* at 214 (Opinion No. 445) (1956).

statement of dual qualifications on office doors,[16] "inasmuch as the placing of such a legend on an office door in a community such as the City of New York would not be calculated to attract persons to enter the premises in which the professions are practiced and would not, therefore constitute either advertising or solicitation."[17]

It appears that no definitive ruling as to such publicity has been made by the AICPA; however, in the light of the decision by its Ethics Committee that joint practice was not unethical,[18] a statement of dual qualifications by an individual practicing as an accountant would not likely be proscribed.

THE PROPOSED CODE'S PROHIBITION OF JOINT PRACTICE

It may be seen from the preceding section that the proposed Code reaffirms the majority position of the ABA Ethics and Grievance Committee prohibiting all types of joint practice. However, since a minority of that Committee disagreed with some of the majority's reasons for prohibiting all types of joint practice, a re-examination of the position as restated in the present Code is warranted.

The Solicitation and "Feeder" Arguments

Those who argue that joint practice leads to unlawful solicitation recognize that legal and accounting services are closely related in many areas. Because of this relationship, they contend, an attorney-CPA who has been engaged in an accounting capacity may be called upon to render legal services without a realization by the client that he is in fact engaging the joint practitioner as an attorney. However, the opponents of this position contend that it is precisely this connexity, inherent in certain problems, that makes joint practice advantageous to the public. They argue that the dually qualified individual is better able to recognize the full import of the problems presented as related to both professions, and that he is therefore able to serve his client with greater efficiency. Although the client who engages the CPA-attorney because of his accounting qualifications may unwittingly be employing a poor attorney, it would seem that the services he receives in the area of inseparable accounting-legal problems will generally be superior.

16. *Id.* at 194 (Opinion No. 388) (1950).
17. *Id.* at 221, 223 (Opinion 434) (1955).
18. See note 9 *supra.*

The second reason supporting the Code's position is that the accountant often comes in contact with persons requiring the services of an attorney, thus furnishing him an opportunity for indirect solicitation. In opposition it has been maintained that an attorney's engaging in several branches of legal work will have the same effect, that is, one branch will provide him with engagements in another.[19] The rebuttal is that in the latter instance the attorney is merely practicing law, while the attorney-CPA is practicing a separate profession of accounting. However, this may be a distinction without a difference because the accountant is subject to ethical standards very similar to those of the attorney. Thus, under the Rules of Professional Conduct of the AICPA, the CPA is forbidden to solicit clients,[20] to advertise,[21] or to engage in any occupation incompatible or inconsistent with that of public accounting.[22] As the practice of public accounting is so regulated, it would seem that the danger of such professional practice acting as a "feeder" would be of far less concern than other types of business, like real estate or insurance agencies, which may advertise extensively, but in which an attorney is permitted to engage along with his law practice. In addition, it should be remembered that where there is a difference in ethics, the joint practitioner is required to adhere to the standards of the legal profession.[23] Thus, although in some minor respects[24] the accountant is allowed greater freedom of publicity, this difference would seem immaterial because the higher standard of legal ethics would control the joint practitioner's actions.[25]

The Specialization Argument

An attorney-CPA engaging in joint practice holds out to the public his dual qualifications. This practice has been criticized as a statement of an intent to specialize in those areas of the law

19. Comment, 3 U.C.L.A.L. REV. 360, 369 (1956).

20. *American Institute of Certified Public Accountants, Rules of Professional Conduct*, as quoted in CAREY, PROFESSIONAL ETHICS OF CERTIFIED PUBLIC ACCOUNTANTS 213, 214, Rule 6 (1956) (hereinafter cited as CAREY).

21. Rule 10, *id.* at 215.

22. Rule 4, *id.* at 214. The practice of law by a person dually qualified is not considered an occupation incompatible or inconsistent with the practice of public accounting. See note 9 *supra*.

23. ABA, OPINIONS OF THE COMMITTEE ON PROFESSIONAL ETHICS AND GRIEVANCES 150, 151 (Opinion No. 57) (1957).

24. CAREY, *op. cit. supra* note 20, at 215 (Rule 10(a)). CPA may publish professional card to announce change of address; attorneys not allowed to do this. See Comment, 3 U.C.L.A.L. REV. 360, 366, n. 33 (1956).

25. See note 23 *supra*.

wherein dual qualifications would be of value. Because legal specialties have not been sufficiently defined nor minimum standards established to guide the public, statements of specialization, other than those sent to fellow attorneys, are prohibited.[26]

But, as standards have been established for the CPA, it would seem that the rule against statement of a specialty, even admitting that publication of dual qualifications is such a statement, should not be applied to the attorney-CPA. All that such a person has stated is his recognized proficiency in accounting for which standards, under which he has qualified, have been carefully established for the public's protection. It is not that such representation "tends to imply special ability in the law,"[27] as the proposed Code states, rather such representation is an indication, for the benefit of the public, that the dually qualified individual has the requisite education and experience to comprehend more fully, and therefore to counsel his client more capably on, the accounting aspects of a legal problem, in whatever area of the law they may arise.

Objection has been voiced against the present position on specialization under Canon 27, which allows attorneys in the areas of admiralty, patents and trademarks to publicize their specialty, but which denies this privilege to all other attorneys. The wisdom of prohibiting statements of specialization, rather than regulating areas of specialty has been questioned.[28] For example, it has been suggested that taxation is an area of the law in which the practitioner should be allowed to specialize, as special training, experience and standards are required for those engaging in such practice.[29]

The Conflict of Duties Argument

It has been said that the conflict in duties between an attorney's function as an advocate and the accountant's function as an "impartial" fact finder is the "most compelling argument in

26. ABA, *Canons of Professional Ethics, Canon 46*, in DRINKER, LEGAL ETHICS 242 *et seq.* (1953).

27. Proposed Code of Conduct, as quoted in 9 J. TAX. 198-200 (1958).

28. It has been suggested that a solution to the specialization problem in general might be to appoint sections within the ABA to represent and control areas of specialization. Joiner, *Specialization in the Law: Control It or It Will Destroy the Profession*, 41 A.B.A.J. 1105 (1955).

29. Maguire, *Conscience and Propriety in Lawyer's Tax Practice*, 13 TAX L. REV. 27, 34, 48 (1957). With regard to taxation, the appointment of an Ethics and Grievance Committee more acquainted with the particular problems of tax practice has been suggested. *Id.* at 47-48.

favor of the limitation contained in the proposed Code."[30] In fact, the Code itself adopts the language of a prior case note[31] in referring to the "schizophrenic position" of the lawyer-CPA who engages in joint practice.[32] It should be mentioned that the concept of the CPA's ethical responsibility in the practice of his profession has been expressed by the word "independence" rather than the term "impartiality." This is a distinction of some importance, because it would be difficult for one to be impartial to his client and at the same time be his advocate.

In the accountants' concept there are two kinds of "independence": (1) independence in the broad sense, and (2) independence in expressing opinions on financial statements.[33] Independence in the broad sense requires that the professional accountant will not "subordinate his professional judgment to that of the client or anyone else," and that he assume responsibility for his opinions and recommendations.[34] Every attorney and professional man should be independent at least in this broad sense.[35]

Independence in expressing opinions as to financial statements requires that the accountant "be *independent of any self-interest which might warp his judgment* even subconsciously in reporting whether or not the financial position and net income are fairly presented. Independence in this context means objectivity or lack of bias in forming a delicate judgment."[36]

Certainly every attorney strives to be "independent of any self-interest which might warp his judgment,"[37] but, contrary to the position of the CPA, the attorney may acquire an interest in the litigation so long as that interest is parallel, and not adverse, to that of his client.[38] The most common example of such an interest would be where the attorney is retained on a contingent fee. In this instance, he does in fact have an interest[39] in the

30. Jameson, *A Proposed Code of Conduct: The Relationship of Lawyers and Accountants*, 44 A.B.A.J. 1049, 1052 (1958).

31. Note, 63 HARV. L. REV. 1457 (1950).

32. Proposed Code of Conduct, as quoted in 9 J. TAX. 198-200 (1958).

33. CAREY, PROFESSIONAL ETHICS OF CERTIFIED PUBLIC ACCOUNTANTS, ch. 3 (*Independence and Integrity*) (1956).

34. *Ibid.*

35. See ABA, CANONS OF PROFESSIONAL ETHICS, Canons 8, 15 (1957).

36. CAREY, PROFESSIONAL ETHICS OF CERTIFIED PUBLIC ACCOUNTANTS 21 (1956).

37. *Ibid.*

38. ABA, CANONS OF PROFESSIONAL ETHICS, Canon 6 (obligation to represent client with undivided fidelity), 10 (lawyer should not purchase an interest in subject matter of litigation he is conducting), 13 (reasonable contingent fee permissible where sanctioned by law) (1951). See LA. R.S. 37:218 (1950).

39. A contingent fee contract, which in Louisiana does not comply with R.S.

outcome of the cause; however, as this interest in a very practical way encourages him to even greater efforts of advocacy in his client's interest, it is permissible. But the attorney's self-interest must not be so great as to encourage him to misstate or color the law or facts, for it must always be remembered that the attorney is an officer of the court, and in this capacity his conduct must be governed by principles of candor and fairness so that justice may be obtained.[40] Duties owed by the attorney to the court are, in this respect, practically identical to those owed by the CPA to the public.

In another respect the CPA's duty of independence in the certification of financial statements differs greatly from that of the attorney. When the CPA engages in such certification, he acts in the capacity of a finder of facts owing a duty of objectivity to the public. Therefore, an interest which might warp his judgment in any way, either in his client's favor or to his detriment, must be studiously avoided.[41] It may be readily seen that this position is far more vulnerable to an objection of self-interest than that of the attorney, who as an advocate is only required to avoid interests adverse to those of his client.

Thus, there is a substantial evil in allowing an attorney-CPA to certify financial statements and to act as an advocate for the same client. However, the possibility of conflicting interests has not been considered sufficient to prevent attorneys from engaging in other businesses which are in some respects closely related to the practice of law. For example, an attorney who engages in the examination of titles in his legal practice should not be entirely prohibited from engaging in the real estate business. It would appear that he should be prohibited from rendering an opinion on the title to the particular real estate he sells.[42]

It would seem that a similar solution could be reached with regard to the problem of joint practice by the attorney-CPA. The major advantage of allowing joint practice is that the client receives the benefit of the dually qualified practitioner's additional

37:218, will not vest the attorney with a sufficient interest to constitute a power coupled with an interest. Comment, 18 LOUISIANA LAW REVIEW 690, 702-03 (1958).

40. ABA, CANONS OF PROFESSIONAL ETHICS, Canon 22 (1957).

41. CAREY, *op. cit. supra* note 20, at 215 (Rule 9) provides that the CPA may not be engaged on a contingent fee basis, except with regard to tax cases.

42. See ABA, CANONS OF PROFESSIONAL ETHICS, Canon 6 (1957); DRINKER, LEGAL ETHICS 224, n. 20 (1953). Unreported decisions of the ABA Committee, Decision 38, *id.* at 286. *Cf.* Scotch Lumber Co. v. Sage, 132 Ala. 598, 32 So. 607 (1902).

training. But this advantage would be lost if either the legal or the accounting services received, because of a conflict of interest on the part of the attorney-CPA, were not accorded the full credit to which they would be otherwise entitled. It seems that this loss of value will occur mainly when the dually qualified practitioner has certified the financial statements of his client and also attempts to represent him in the capacity of an attorney.

On the other hand, there would seem to be little objection, just as with the attorney-real estate dealer, to the dually qualified individual's either certifying a client's financial statements, or serving as his attorney; the objection arises when he attempts to do both with regard to the same client. Therefore, it would seem that the most logical and practical solution to the problem of joint practice would be to allow the attorney-CPA to render services in either or both capacities, but to prohibit in any case his certifying financial statements and acting as attorney for the same client. This solution would avoid most of the problems caused by self-interest, while allowing the dually qualified practitioner to use his full capacity to the benefit of his client.

When the CPA is employed other than for the purpose of certifying financial statements, the degree of his responsibility to the public is not the same. Thus, in tax practice, where the majority of attorney-accountant conflicts arise, the CPA may act as an advocate for his client's cause.[43] In this instance the CPA's primary duty is to his client, but he also owes, as does the attorney in tax practice, a duty of fairness to the government and the public.[44] It should also be mentioned that in counseling their clients both the attorney and the CPA should maintain essentially the same attitude of objectivity.[45]

The question of privileged communications may well present a serious problem in joint practice, for communications between a CPA and his client are not privileged unless specifically made so by statute.[46] It would seem that the solution to this problem,

43. CAREY, *op. cit. supra* note 20, at 117, § 63.
44. *Id.* at 120 *et seq.*, §§ 64-68.
45. ABA, CANONS OF PROFESSIONAL ETHICS, Canon 8 (1957).
46. At least twelve states provide for privileged communications between the CPA and his client: Alaska, Arizona, Florida, Georgia, Illinois, Iowa, Kentucky, Louisiana, Maryland, Michigan, New Mexico, and Tennessee. CAREY, *op. cit. supra* note 20, at 167. LA. R.S. 37:85 (1950) provides: "No certified public accountant, public accountant, or person employed by certified public accountant or public accountant, shall be required to, or voluntarily disclose or divulge, the contents of any communication made to him by any person employing him to examine, audit, or report on any books, records, or accounts, or divulge any information derived

however, is not to forbid joint practice by the dually qualified individual, but rather to encourage the passage of statutes making such communications privileged.

THE PROPOSED CODE'S PROHIBITION OF PUBLICITY

The proposed Code not only adopts, in principle, the prohibition, as stated by the ABA Ethics and Grievance Committee in Opinion 272, against an attorney's publicizing his qualifications as a CPA, but seems to extend greatly that principle. The following indicates the position of the Code in banning any publicity of dual qualifications:

> "If the individual shall choose to practice law, then he may not at the same time hold himself out to his clients or to the public as qualified to serve as a certified public accountant. To avoid any misunderstanding on the part of the public, he shall make no reference, either in public or in communications with clients, to any degree signifying proficiency in accounting held by him or to the fact that he might be privileged under different circumstances to serve as a certified public accountant.[47]
>
> "The individual possessing such dual qualifications shall not permit reference to be made to his qualifications to practice the profession in which he is not then engaged in connection with the publication, distribution or advertising of any book or article written by him, or in connection with his appearance as a speaker at any time."[48]

The requirement that the individual not hold himself out as employable in any professional capacity other than the one in which he chooses to engage is in accord with Opinion 272.[49] But the requirement that the dually qualified attorney shall make no reference to any degree signifying his dual abilities and shall not permit others to make any such reference seems to extend the prohibition stated in that Opinion.

A question of construction is immediately presented by part

from such books, records or accounts in rendering professional services except by express permission of the person employing him or his heirs, personal representative or successors."

47. The intervening paragraph is practically identical with that first quoted, but deals with the situation where the individual chooses to act as a certified public accountant, rather than as an attorney.

48. Proposed Code of Conduct, as quoted in 9 J. TAX. 198, 200 (1958).

49. See note 3 *supra*.

of the first paragraph quoted above. The clause, "he shall make no reference . . . to any degree signifying proficiency in accounting held by him," tends to be ambiguous in several respects, and would pose serious problems for the dually qualified practitioner. The first stumbling block is the word "degree." It is difficult to determine whether it refers to an academic degree, or to a quantum of proficiency in accounting. If the former meaning is intended, could the lawyer-CPA, under these provisions, refer to his CPA certificate, or his certificates of membership in his state accounting society of the AICPA? Even assuming joint practice were completely prohibited, if he were to explain definitively to his client that he was not engaged in the practice of public accounting nor employable in such capacity, it is difficult to see what harm would have been done or how the client would have been misled by a reference to the fact of his proficiency in accounting.

However this first ambiguity is resolved, there remains another problem presented by the clause as to what will be considered a "reference." Would the practitioner be referring to his proficiency in accounting by merely hanging his accounting certificates in his law office? If this were forbidden him, suppose a CPA-attorney, practicing and well known as a partner in an accounting firm, lines the walls of his office with reporters and other law books which would obviously be used mainly by an attorney rather than an accountant. Would this be "unethical" under the new Code?[50]

If the Code were strictly applied, perhaps an attorney-CPA, who stringently practiced only one profession, could be considered "unethical" if he continued his membership in the professional societies of the profession in which he was not engaged.[51] It would seem that it would not be fair, let alone right, or "ethical," to deprive him of the opportunities for continuing personal education and of the fellowship which professional societies provide.

Although there may well be objection to carrying on the un-

50. Such practice would seem to be permissible at this time, as the American Institute does not ban joint practice. In fact, it would not seem improper for a practicing CPA to list himself on his building directory and door as an attorney under the current position of the American Institute. See note 9 *supra*.

51. Complete suspension of activities in the profession in which the individual was not then engaged would seem to be the specific intent of at least one of the drafters of this proposed code. See Griswold, *A Further Look: Lawyers and Accountants*, 41 A.B.A.J. 1113, 1179 (1955).

limited joint practice of law and accounting, it would seem that there should be little objection to a statement of dual qualifications which clearly specified the profession in which the individual was engaged.[52] This practice would not only inform the public as to the profession practiced, but also would inform it as to the additional experience and training of the dually qualified individual. Such information would enable the public to choose what services it might require, having the facts squarely before it.

However, the proposed Code, which was drafted by a committee of lawyers,[53] indicates a feeling that making such information available to the public is undesirable because a client may give his legal business to the attorney-CPA, not because of his legal proficiencies, but because of his accounting abilities. The notion underlying this argument is that a good CPA is not necessarily a good attorney. The foremost advocate of this position in the legal profession nonetheless recognizes that a good attorney may be a poor accountant.[54] Yet the legal profession seems to feel that it is not improper to allow an attorney-CPA to perform accounting services in connection with his legal work.[55] Apparently, no serious consideration is given to the need to assure the quality of such accounting services, or to provide the public with a means of determining the competency of an attorney to handle complex accounting problems that arise in certain areas of the law. It would seem that incompetency in accounting where matters of tax or corporate practice are concerned can be equally injurious as incompetency in law. However, the proposed Code seems to indicate a feeling that the public is only entitled to select attorneys on the basis of their legal qualifications.

Be that as it may, the proposed Code appears unfair to the public, as well as the CPA-attorney, in yet another and more important way. By prohibiting any reference to dual qualifications in the publication of a book or article, or in connection with the appearance of a dually qualified person as a speaker, the Code would deprive the readers or audience of a valuable guide to the

52. For example, a card or letterhead reading "John Doe, attorney at law-certified public accountant," "Engaged solely in the general practice of law."

53. See note 1 *supra*.

54. Griswold, *A Further Look: Lawyers and Accountants*, 41 A.B.A.J. 1113, 1116 (1955).

55. ABA, OPINIONS OF THE COMMITTEE ON PROFESSIONAL ETHICS AND GRIEVANCES, 565, 569 (Opinion No. 272) (1957): "The Committee all agree that a lawyer, who is also a C.P.A. may perform what are primarily accounting services, as an incident to his law practice, without violating our Canons."

degree of reliance they should place upon his words and ideas. In publishing or speaking, especially to professional groups, the dually qualified individual, in most cases, is not attempting in any way to hold himself out as employable in any capacity — either as a CPA or as an attorney; rather he is attempting to help others by sharing his knowledge and experience with them. Forbidding a complete statement of his professional qualifications can only have the effect of reducing the degree of reliance placed in him by his audience, and thus reduce the effectiveness of his communication with them.

Suppose, for example, that a leading periodical in the field of taxation, having as its editors prominent practitioners, were to include on its masthead, beside the name of each editor, a statement of his law degrees and/or certification in public accounting. Although this practice would lend much credence to the articles found in the publication, especially for the reader who was not familiar with the work of the individual editors, can it be denied that the practice would violate the provisions of the proposed Code?[56]

CONCLUSION

It is well recognized that in certain areas of the law, particularly tax and corporate practice, knowledge and experience in both accounting and law are important,[57] and that a person dually qualified will usually be able to render his client a more

56. In this connection it should be noted that the American Institute specifically permits the author of a book or article to designate that he is a CPA, holding that such action does not violate Rule 10 of the Rules of Professional Conduct which prohibits advertisement of professional attainments by a CPA. CAREY, *op. cit. supra* note 20, at 69.

Canon 40 of the Canons of Professional Ethics of the American Bar Association provides, in part, that "a lawyer may with propriety write articles for publications in which he gives information upon the law." The ABA Committee on Professional Ethics and Grievances held in Opinion 92 that an attorney could sell articles dealing with legal subjects to periodicals in general circulation, and in Opinion 141, that it was not improper to publish the attorney-author's picture and his name along with his article.

57. A very recent statement to this effect has been made in the Joint Statement Relating to Practice in the Field of Taxation, promulgated by the New York State Bar Association and the New York State Society of Certified Public Accountants, as quoted in 107 J. ACCOUNTANCY 75 (March 1959): "In the large areas in the tax field where the legal and accounting aspects are interrelated and overlap, it is often in the public interest that the services of both professions be utilized. Indeed, experience has shown that a lawyer and a certified public accountant working together on behalf of a common client in the tax field constitute a very effective team. Where the lawyer and accountant have joined hands in the preparation and presentation of a case before the Internal Revenue Service, the taxpayer is most effectively represented." It would seem that he could be even more effectively represented when his counsel has met the standards required for qualification in both professions.

complete service at a lower cost. It has been noted that such a "package service" would be especially valuable to the small businessman who may not be able to engage an attorney and a CPA separately.[58] However, considering the conflict of duties problem, it must be recommended that joint practice be limited only by prohibiting the joint practitioner's certifying financial statements and acting as an attorney for the same client. On the other hand, the reasons which have been advanced in support of prohibiting any type of joint practice do not seem to apply to situations where the attorney-CPA, in addition to acting in the capacity of an attorney, counsels his client in accounting problems not requiring certification.

The stringent prohibitions expressed in this proposed Code would undoubtedly have the effect of deterring capable individuals from attempting to achieve professional proficiency in both accountancy and law. To discourage such attempts would be obviously detrimental to both professions, and more important, to the public, for although unlimited concurrent practice of law and accounting may be inadvisable, the individual practitioner will inevitably apply, to the public good, his knowledge of one discipline in his practice of the other.

Rather than follow the negative and prohibitory approach of the proposed Code, it would seem better to encourage the development of greater individual proficiency in both professions to the end that the public may receive the benefit of more efficient and complete counsel in those areas of the law involving virtually inseparable questions of law and accounting. To achieve this end, Canon 27 of the ABA's Canons of Professional Ethics and the related rules of the various state bar associations should be amended to permit the attorney-CPA to designate himself as "attorney-certified public accountant" and to state openly his dual professional qualifications on cards, letterheads, shingles, doors, building directories, and announcements.

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Appellate Review on the Facts in a Criminal Case

HOW MUCH EVIDENCE IS "SOME" EVIDENCE

Article VII, Section 10, of the Louisiana Constitution provides that the Supreme Court's appellate jurisdiction in criminal

58. Comment, 3 U.C.L.A.L. REV. 360, 369 (1956).