

INDIANA STATE BAR ASSOCIATION

Opinions Of Legal Ethics Committee, 1965

Opinion No. 1 of 1965
Lawyers Cannot Be In Collection Directory

The Legal Ethics Committee was asked whether the listing of a lawyer's name, or a law firm's name, in a list of laymen and lawyers as collectors, is ethical.

It is the opinion of the committee that such listing violates Canon 27. The services of a collection agency are so related to the practice of law as to lead, or be apt to lead, to the necessity for legal services, if in fact legal services are not required at the outset. Solicitation by a lawyer of employment for rendition of such services is solicitation of "professional employment" within the meaning of Canon 27. Furthermore, application of the Canon is not dependent upon the disclosure or nondisclosure of the fact that the lawyer is a lawyer.

The American Bar Association's Committee on Professional Ethics held, in Opinion 233: "The listing of a lawyer's name in a list of laymen and lawyers as collectors, adjusters, abstractors, tax consultants, and the like, violates Canon 27, even if there is no indication that the listee is a lawyer."

The Indiana State Bar Association's Legal Ethics Committee concurs in, and adheres to that Opinion.

Opinion No. 2 of 1965
City Attorneys May Not Bring Suit Against City

A City Attorney asked the Legal Ethics Committee whether he could represent a plaintiff under the following circumstances. Before being appointed City Attorney, the attorney represented the plaintiff in a lawsuit against an Indiana town. Because of the complexity of the lawsuit, the City retained special counsel to defend the lawsuit. Thereafter, while the case was pending, plaintiff's attorney was named to the post of City Attorney. The lawsuit in question, however, still is being defended exclusively by special counsel, so that there is no actual conflict of representation.

The Indiana Legal Ethics Committee is of the opinion that any representation of a plaintiff against a city by a city official is

unethical. The American Bar Association's Professional Ethics Committee held, in Opinion 30, that "an attorney in the public employ should so conduct himself as to remain above all suspicion, even at personal financial sacrifice." In Opinion 186, the ABA Committee held "the county attorney should not accept employment where his duties to his private client and his public duties may conflict either directly or indirectly. Furthermore, for the county attorney charged with public duties to accept employment adverse to this public employer puts the county attorney in an unseemly situation likely to destroy public confidence in him as a public officer, and bring reproach to his profession." The Committee further held that "an attorney should not only avoid all impropriety but also all appearances of impropriety."

This Committee concurs with ABA Opinions 30 and 186. Therefore, Canon 6 of the Canons of Professional Ethics, pertaining to conflicts of interest, require a city attorney to withdraw from all litigation against the city, even though there is no actual dual or conflicting representation involved.

Opinion No. 3 of 1965
Writing Articles About Own Cases Unethical

The Legal Ethics Committee was asked whether an attorney who had a proprietary interest in a newspaper, and acted as part time reporter, news story writer and editorial writer for the newspaper, could write articles or editorials concerning criminal or civil cases in which he was involved as an attorney.

This committee, in Opinion No. 6 of 1963, held similar such conduct violated Canons 27 and 20 of the Canons of Professional Ethics. The committee, after careful study of the applicable Canons of Ethics, concludes that an attorney's proprietary interest in a newspaper in no way makes such conduct ethical.

An attorney may own or otherwise engage in a business. However, if the business is one which readily lends itself as a means for procuring professional employment for the attorney, or is such that it can be used as a cloak for indirect solicitation on his behalf, or is of a nature that if handled by a lawyer would be regarded as the practice of law, such business ethically cannot be connected in any way, either directly or indirectly, with his role as an attorney. See American Bar Association Professional Ethics Committee Opinion 57.

Publishing stories or editorials about civil or criminal cases in which he is an attorney for one of the parties, whether or not the material is slanted toward the viewpoint the lawyer advocates in the lawsuit, clearly is in violation of Canon 27, which prohibits advertising either directly or indirectly, and Canon 20, which prohibits newspaper publications by a lawyer as to pending or anticipated litigation.

Opinion No. 4 of 1965
Public Official May Retain
Law Firm Connection

Several lawyers who have been elected or appointed to full time nonjudicial public offices have asked the Legal Ethics Committee for its opinion whether a lawyer holding public office may continue his partnership in his law firm and whether the firm may retain the name of the partner while he holds a full time governmental position.

The Professional Ethics Committee of the American Bar Association, in its Opinion 192, approved both the continued membership by a nonjudicial public official in a law firm and the retention of his name in the firm name. Opinion 192 was, in part, as follows:

"In general, when an attorney accepts non-judicial public employment, his name may properly be carried by his firm. If the conditions of his employment require that he sever all other connections, he can no longer remain a member of the firm, and in such case should not permit his name to be used by the firm. In the absence of such conditions or of a law requiring the attorney to refrain from private practice, there is no objection to his retaining his membership in the law firm or in sharing the earnings of the law firm, provided such firm does not represent interests adverse to the employer, and the public is not misled.

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"The question is whether if he accepts full time employment, by either governmental or private agency, he may continue to be a member of a law firm, or allow his name to be used in the firm name. In the absence of legislation forbidding this, there is no impropriety in his continuing to be a member of the firm so long as the firm refrains from representing interests adverse to the employer.

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"The situation is not changed if the attorney ceases to be a member of the firm and allows his name to be retained as a part of the firm name. So long as his name is retained by the firm, such firm should not represent interests adverse to the employer, either public or private, of the firm member. When such employment ceases, the firm may again represent interests adverse to the former employer, arising subsequent to the termination of the employment, and in no wise related to such employment."

Therefore, in the absence of a statutory prohibition against it, an attorney may retain his membership in his law firm and may continue to share in the earnings of his firm, and the firm may continue to use its present name without change, so long as the firm does not represent interests adverse to the governmental interests which the official must uphold and so long as there is no direct or indirect solicitation of law business through the public office held by the attorney. The firm has a choice of either restricting its law practice somewhat while the partner holds the governmental position or severing its relationship with the official.

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Opinion No. 5 of 1965
Public Utterances About The Facts Or
Merits Of Pending Litigation Unethical

The Legal Ethics Committee was asked for its opinion concerning the propriety of statements made to the press by either a prosecuting attorney or a defense attorney concerning the facts or merits of a pending criminal case.

"Trial by newspaper" is to be strongly condemned.

Both the state and the defendant have the right to have the question of guilt or innocence determined in a court of law, by an impartial jury or by an impartial judge. Inflammatory publicity may interfere with a fair trial and otherwise prejudice the due administration of justice; therefore prosecuting attorneys and defense attorneys alike must refrain from public statements which tend to arouse public opinion about the merits of pending litigation. In this connection, the American Bar Association's Professional Ethics Committee has stated (Opinion 199):

"Although jurors conduct their deliberations in secret, they are selected from the body of the public. They are likely to know what the general public knows and to reflect the public attitude. Trials are open to the public, and aroused public opinion respecting the merits of a legal controversy creates a court room atmosphere which, without any vocal expression in the presence of the petit jury, makes itself felt and has its effect upon the action of the petit jury. Our fundamental concepts of justice and our American sense of fair play require that the petit jury shall be composed of persons with fair and impartial minds and without preconceived views as to the merits of the controversy, and that it shall determine the issues presented to it solely upon the evidence adduced at the trial and according to the law given in the instructions of the trial judge."

Opinion 199 held that the public prosecutor ethically may issue public statements throwing light on his prosecution policy, may announce arrests and his intention to file charges. However, such statements are not to be inflammatory. Every effort must be made by both the prosecutor and the defense counsel to insure a fair trial before an impartial jury conducted in unbiased surroundings.

Canon 20 of the Canons of Professional Ethics states:

"Newspaper publications by a lawyer as to pending or anticipated litigation may interfere with a fair trial in the Courts and otherwise prejudice the due administration of justice. Generally they are to be condemned. If the extreme circumstances of a particular case justify a statement to the public, it is unprofessional to make it anonymously. An ex parte reference to the facts should not go beyond quotation from the records and papers on file in the court; but even in extreme cases it is better to avoid any ex parte statement."

The Legal Ethics Committee holds that it is not only better, even in extreme cases, to avoid any ex parte statements by members of the Bar but that such statements are to be avoided and seldom if ever made. The Committee agrees that a public official charged with the enforcement of laws may declare his general policies and that a prosecuting attorney may properly declare his general prosecution policies, declare arrests, and declare his intention to file charges, providing that the declarations are made in a non-inflammatory manner not calculated to bring pressure to bear upon courts of justice. The Committee further rules that the foregoing, concerning public utterances of attorneys, shall apply to both civil and criminal cases and in fact to all litigated matters.

Opinion No. 6 of 1965
Disparaging Remarks About A Judge
Or Opposing Counsel Unethical

Public statements by lawyers about opposing counsel or about a judge who has decided or will decide a case have been brought to the Legal Ethics Committee's attention with requests for an opinion.

It has previously been ruled that personal attacks upon a judge or upon an opposing counsel by a member of the Bar are not only reprehensible but are highly unethical. It has also been ruled that any attempt to obtain a favorable court decision or decisions by attempting to bring public pressure to bear upon a judge is equally as unethical as attempting a bribe.

Furthermore, personal attacks upon a judge or member of the judiciary are forbidden by the oath of an attorney in the state of Indiana which states in part: "I will maintain the respect due to courts of justice and judicial officers;....I will abstain from offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;...."

Canon 17 of the Canons of Professional Ethics states as follows:

"Clients, not lawyers, are the litigants. Whatever may be the ill-feeling existing between clients, it should not be allowed to influence counsel in their conduct and demeanor toward each other or toward suitors in the case. All personalities between counsel should be scrupulously avoided. In the trial of a cause it is indecent to allude to the personal history or the personal peculiarities and idiosyncrasies of counsel on the other side. Personal colloquies between counsel which cause delay and promote unseemly wrangling should also be carefully avoided."

In view of the foregoing this committee determines that attempts to influence the outcome of pending litigation by personal attacks upon a judge or opposing counsel, or by attempt to pressure the judge into making a certain decision or decisions, either by public utterances or by taking numerous changes of venue, or acts of attempting to bring public pressure to bear upon opposing counsel by public utterances designed to influence him to take action or refrain from taking action on behalf of his client, are unethical.

The Committee in no way wishes to undermine a lawyer's duty to bring to the immediate attention of the proper state or federal authorities and to the appropriate grievance committee, any evidence of fraud or bribery. What is condemned by this opinion is the attempting to bring pressure to bear upon those entrusted with the administration of justice in order to influence action or opinion, together with the all too frequent human failing of a lawyer rationalizing a lawsuit decision by personal attack upon the judge or opposing counsel.

It is unprofessional and unethical to rationalize loss of a case by attacking the honesty or integrity of either the judge or opposing counsel. Such conduct is unethical whether the statements are made to the news media for public release or in private to a client or acquaintance.

Opinion No. 7 of 1965
Newspaper, Magazine And Program
Advertising By Lawyers Unethical

The Legal Ethics Committee has had called to its attention advertisements containing the names of attorneys in high school yearbooks, county fair programs, fraternity magazines, and newspapers.

Canon 27 of the Canons of Professional Ethics clearly and unmistakably prohibits advertising in all forms, whether direct or indirect, and regardless of motive.

Announcements in high school yearbooks, county fair programs, etc., such as "Compliments of John Doe, Attorney," or "Best Wishes - John Doe, Attorney," violate Canon 27 and are prohibited. Similarly, newspaper advertisements which state: "Seasons Greetings - John Doe, Attorney," or "Congratulations, State Champs - John Doe, Attorney," or "Good Luck, Team - John Doe, Attorney," also clearly are in violation of Canon 27.

When a charitable organization solicits an advertisement from a lawyer, the lawyer must decline, no matter how worthy the charitable purpose, since good motive is no excuse for a lawyer engaging in advertising. Lawyers of course are free to make donations to worthwhile causes.

Dignified announcements of the opening of a new law office, or the removal of a lawyer's office to a new location, are ethical when placed in the local newspaper for a reasonably limited period of time. Announcements by candidates for public office ethically may mention that the candidate is a lawyer, especially when the public office calls for, or would be enhanced by, legal qualifications. No other announcements or advertisements by a lawyer are ethical.

Opinion No. 8 of 1965
Use Of Law Firm Name For Other Business Unethical
Rules For Maintaining
Separate Business Enunciated

The Legal Ethics Committee was asked whether a law firm could conduct an insurance agency, an abstract company, a collection agency, a real estate brokerage office or any other type of business, using the name of the law firm, and whether the law firm may retain the name of a former partner after his decease.

The use of a law firm name for any other business, occupation or profession is unethical.

Guidelines for a business activity engaged in by a lawyer were set forth by the American Bar Association's Professional Ethics Committee in its Opinion 57, namely:

"It is not necessarily improper for an attorney to engage in a business; but impropriety arises when the business is of such a nature or is conducted in such a manner as to be inconsistent with

