

LEGAL ETHICS COMMITTEE OPINIONS FOR 1961

OPINION NO. 1 OF 1961

An opinion of the Committee was requested by the Association's General Counsel concerning the propriety of a newspaper column after the Association had received an inquiry from a newspaper which was considering publishing the column. The newspaper forwarded correspondence it had received from an attorney, soliciting publication of the column for a fee.

The proposed purpose of the column was to give advice with respect to individual rights. The column was to be in the form of answers to inquiries submitted by readers of the publication. The title of the column was to bear the name of the lawyer who authored it.

The Committee, after reviewing the pertinent Canons of Professional Ethics and the Opinions of the American Bar Association Committee on Professional Ethics, holds that the publishing of a newspaper column giving legal advice to inquirers in respect to their individual rights by an attorney violates Canon 40; the accepting of employment from a newspaper by an attorney to write a newspaper column giving legal advice to readers violates Canon 35; the solicitation of the sale of such a newspaper column by an attorney and the prominent use of the attorney's name in the column constitutes a violation of Canon 27.

OPINION NO. 2 OF 1961

The Legal Ethics Committee also was asked for its opinion on the following question:

Does an attorney who has been retained by an insurance company to assert the insurance company's subrogation rights, usually for property damage arising out of an automobile accident, violate the Canons of Ethics in writing a letter to the named assured who he then nominally represents offering to represent such named insured in a claim for personal injuries arising out of the same accident?

It is the opinion of the Committee on Legal Ethics that such offer, either by letter or verbally, is a breach of Canons 27 and 28 of the Canons of Professional Ethics. Such conduct constitutes the solicitation of professional employment.

OPINION NO. 3 OF 1961

An opinion was requested from the Committee by an attorney desiring to operate a credit adjustment bureau regarding:

"Whether an attorney engaged in the practice of law may also own and operate a credit adjustment bureau or a budget counseling agency, and, if so, whether he may advertise or otherwise solicit such business?"

The Committee made an exhaustive study of the pertinent Canons of Professional Ethics and the Opinions of the American Bar Association's Committee on Professional Ethics and has concluded that, while it is not necessarily improper for an attorney to engage in a business, it is improper if:

(1) The business is one that will readily lend itself as a means for procuring professional employment (Canon 27 - prohibiting the direct or indirect solicitation of business); or

(2) The business is of such a nature that, if handled by a lawyer, would be regarded as the practice of law (Canon 35 - prohibiting the exploitation of a lawyer's services by a lay agency).

It is the Committee's opinion that the business of a credit adjustment bureau or budget counseling agency is subject to both of these criticisms with regard to lawyer participation.

A person in need of credit adjustment or some sort of debt pooling arrangement is generally a person who is on the brink of legal proceedings or who may already have had such proceedings instituted against him. The potential that a lawyer's participation in a credit adjustment bureau or budget counseling agency might be used as a cloak for indirect solicitation of business is held to be sufficient to condemn such participation under Canon 27.

The Committee also believes that the business of a credit adjustment bureau is of a nature which, if handled by a lawyer, would be regarded as the practice of law. The fact that a layman can lawfully render such a service does not mean that it is not a professional service when rendered by a lawyer. Lawyers are frequently called upon to render such a service for the very reason that it can be better rendered by a lawyer, and, in such an instance, the rendering of <sup>the</sup> service constitutes professional employment. It is held that Canon 35, which prohibits a lawyer from rendering legal services to a lay intermediary for the benefit of its patrons, is violated if a lawyer participates in the business of a credit adjustment bureau.

The question of whether an attorney engaged in the practice of law may also own and operate a credit adjustment bureau or a budget counseling agency is consequently answered in the negative.

#### OPINION NO. 4 OF 1961

The Legal Ethics Committee also was asked for its opinion concerning the following question:

"May an attorney engage in the practice of criminal law be a bail bondsman, and, if so, may he solicit bail bond business?"

The same general issue is involved in this question as was presented to the Committee in its consideration of Opinion No. 3 above.

It is axiomatic that any person who needs a bail bond also needs a criminal lawyer. The bail bond business is consequently one which readily lends itself as a means for procuring professional legal employment.

It is the opinion of the Committee, therefore, that it would be a violation of Canon 27 of the Canons of Professional Ethics for an attorney either to engage in the bail bond business or to solicit such business.

OPINION NO. 5 OF 1961

The Legal Ethics Committee was asked by an Indiana physician for its opinion concerning the following question:

"Does an attorney have a duty toward a physician to withhold from the proceeds of a personal injury case settlement, a sum for the payment of the physicians services rendered to the client prior to the attorneys connection with the matter, where the client went to the physician for treatment and not for an examination for litigation purposes, but where the physician prepared a medical report at the request of the attorney for use in negotiating a settlement, and where a part of the settlement proceeds are specifically designated as applying to the physicians services?"

After carefully reviewing the Canons of Professional Ethics and the Opinions of the Ethics Committee of the American Bar Association the Indiana Legal Ethics Committee concluded that the question must be in the negative. It might be an entirely different matter if the attorney had requested the physical examination or had advised his client to obtain medical services from the physician after institution of settlement negotiations.

The only possible duty the attorney would have under the circumstances presented by this question would be a responsibility to see that the costs of the medical report were taken care of by the client.