KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-46
Issued: July 1971

This opinion was decided under the Code of Professional Responsibility, which was in effect from 1971 to 1990. Lawyers should consult the current version of the Rules of Professional Conduct and Comments, SCR 3.130 (available at http://www.kybar.org), before relying on this opinion.

Question: May an attorney representing a credit union suggest to a debtor that he file a petition under the "wage-earner" plan of federal bankruptcy act and accept employment to file petition if debtor decides to file petition?

Answer: No.

OPINION

The Committee on Professional Ethics of the Kentucky State Bar Association has received an inquiry from a practicing member of the Kentucky State Bar, which is summarized as follows:

The attorney making the inquiry represents a credit union which has referred a number of its "bad debts" to the attorney for collection. He observes that most of the persons involved are burdened with debts which are substantial in comparison with their earnings, although most of the persons involved are gainfully employed. He is concerned about the propriety of his suggesting to the debtors the advantages of a "wage earner" plan under Chapter XIII of the federal bankruptcy act, and is especially concerned about the ethical propriety of his drafting the wage-earner plan for the debtors in the event they request him to do so. He hastens to explain that he would not ask to be their lawyer, and would merely point out to the debtors what a wage-earner plan is, and that they would need an attorney. In the event that the debtors desire to employ the attorneys in question, he wonders if he would be permitted to accept such employment.

The Committee is pleased to receive this inquiry, because we feel that this situation has probably arisen on many occasions, and further feel that perhaps attorneys have not given enough consideration to the ethical problems involved. Obviously, these circumstances create a fertile atmosphere for unethical conduct, are quite likely to be viewed with extreme suspicion.

While the Committee does not envision any particular ethical problem in merely explaining the 'wage-earner" plan to the debtor, the Committee nevertheless believes that the ethical situation presented compels the attorney to promptly suggest that the debtor should engage the services of another attorney in order to represent him in the "wage-earner" plan, and that the attorney for the credit union should positively decline employment by the debtor.

In many similar situations, it might well be to the advantage of the debtor to petition to be adjudged a bankrupt, rather than petition for an extension of time to pay debts under the "wage-earner" plan. Obviously, a petition in bankruptcy would adversely affect the attorney's original employer, and create a hopeless conflict of interest situation. See Wise, Legal Ethics, Second Edition, pages 272 and 273:

> A lawyer must be independent and must represent his client to the best of his abilities regardless of who selects him or who pays him . . . no man can serve two masters. If there is the slightest doubt as to whether or not the acceptance of professional employment will involve a conflict of interest between two clients or with a former client, . . . the employment should be refused.

Note to Reader

This ethics opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530 (or its predecessor rule). The Rule provides that formal opinions are advisory only.