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ATTORNEY OWNED COLLECTION AGENCY

LEGAL ETHICS INQUIRY 77-1

Your letter addressed to the Executive Director of The West Virginia State Bar, in which you seek an opinion as to the propriety of an attorney's ownership of a collection agency, has been referred to this Committee.

You state that you have in mind starting a collection agency in West Virginia and hiring several individuals to run the agency for you and that you anticipate taking no active part in the agency's operation, except that you "would probably represent the agency in court should a suit have to be filed upon a collection."

Prior to the adoption of the Code of Professional Responsibility, there was no express authorization for or prohibition against engaging in the dual practice of law and another business or profession. Ethics opinions with respect to this question were based upon former Canons 27, 33 and 34 relating to solicitation, advertising, division of fees with non-lawyers, and partnership with non-lawyers.

The Code of Professional Responsibility introduced the first specific rule on the subject. It provides in DR 2-102(E) as follows:

> A lawyer who is engaged both in the practice of law and 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.

By implication this would appear to permit a lawyer to practice law and simultaneously engage in any other respectable business or profession, subject, however, to the restrictions stated and any other relevant restrictions in the Code of Professional Responsibility.

The basic requirement of this rule is that letterheads, office signs and professional cards may not be used to publicize simultaneously both a law practice and another business or profession in which the lawyer may be engaged. Thus, a lawyer's practice and the related business should not be conducted from the same office or have a common reception area and a common telephone number. Similarly, advertisement in a publication of any kind used in the other occupation may not identify a lawyer participant in a business or other profession as a lawyer, with the narrow exception permitted by DR 2-101(B)(3). The fundamental principle behind these limitations is to protect the public and the profession against improper solicitation, advertising or commercialization, and to keep the other occupation from being used as a cloak for improper solicitation or from being deliberately used as a direct or indirect feeder of legal work.

Where the other occupation is one entirely unrelated to the practice of law, the danger of improper or unprofessional conduct is considerably less than where such occupation is so closely intertwined with legal matters that it is difficult to distinguish

the lawyer's conduct in his other occupation from his conduct as a lawyer. A totally unrelated occupation would be one where the products or services provided to customers or clients will not involve either service or a need for service which would be essentially legal in nature. For example, unrelated businesses would be the operation by a lawyer of a shopping center, a retail store, or a manufacturing enterprise. Such an unrelated business could advertise its products or services to the public and be conducted in the same building as the lawyer's office, provided the requirements of DR 2-103(E) are met.

Where the other occupation is that of accountant, collection agency, claims adjuster, labor relations consultant, business consultant, insurance agent, marriage counselor, real estate broker, income tax service, loan or mortgage broker or any other business where the lawyer's activity would be likely to involve frequent solution of problems that are essentially legal in nature, the risk of having the other occupation used improperly as a feeder for legal practice is very great. To avoid this, every precaution should be taken to separate the other profession or business from the legal practice.

If the business is one in which advertising and promotion are permitted, no material used in connection with the business may disclose the fact that a participant is a lawyer, and the business should be conducted on premises sufficiently separate from those of the law practice to avoid having the clients or customers of the business gain the impression that the two are related. In

such situations, the lawyer should not accept as a legal client for matters originating through the other occupation a person whose initial contact with him was as a client or customer of such other occupation, unless the lawyer-client relationship clearly developed entirely on the initiative of the client, without solicitation on the part of the lawyer, and was not dependent upon the lawyer's participation in the other occupation.

Where the lawyer merely participates in the collection activities or the management of a collection agency, he is doing that which any layman may do. Nevertheless, the collection of claims without court action is "professional employment" within the meaning of the Code of Professional Responsibility when the service is performed by a lawyer. In ABA Opinion 57 it was held that a practicing attorney may not devote part of his time to managing an insurance investigating and adjustment bureau which solicits business, even though the bureau renders no service which could not properly be rendered by a layman.

We are of the opinion that a practicing lawyer cannot participate in the collection activities or the management of a collection agency which solicits the collection of claims. If a lawyer is to participate in such activities, he must withdraw from the practice of law and refrain from holding himself out as a lawyer. See ABA Formal Opinion 225 (July 12, 1941).

Where the lawyer does not participate in the collection activities of the agency or its management but has a financial interest in its business and is employed as attorney for the prin-

cipal when court proceedings are necessary to collect a claim, the solicitation by the agency would constitute indirect solicitation of professional employment for the lawyer. It is said in ABA Opinion 57:

> Some businesses in which laymen engage are so closely associated with the practice of law that their solicitation of business may readily become a means of indirect solicitation of business for any lawyer that is associated with them.

A collection agency that solicits business does not make it improper for a lawyer to accept employment, through the agency, to represent the owner of a solicited claim if there is no connection between the agency and the lawyer which makes the solicitation of the agency an indirect solicitation for the lawyer. See ABA Opinions 225 and 198.

Where the lawyer has a financial interest in the collection agency but in nowise participates in its activities and does not accept professional employment through the agency, we can see no impropriety provided that the name of the lawyer is neither included in the name of the agency, placed on its stationery, nor included in its advertisements, and nothing is done to create the impression that the agency enjoys the benefit of the lawyer's advice and professional responsibility.

The vice in the first two situations lies in the fact that the agency solicits the work, the performance of which will involve the professional responsibility or professional services of the lawyer. In the third situation the lawyer is merely an investor

in a legitimate business, the conduct of which will not involve his professional services or responsibility.

Our conclusions may be summarized as follows:

(1) It would be improper for a practicing attorney to participate in the collection activities or the management of an agency which solicits the collection of claims.

(2) It is improper for a practicing attorney who has a financial interest in a collection agency which solicits the collection of claims to accept employment as attorney for the creditor when court proceedings are necessary.

(3) It is not improper for a practicing attorney to have a financial interest in a collection agency which solicits the collection of claims if he does participate in its collection activities and does not accept employment through the agency.