

FORMAL OPINION NO. 42

The Legal Ethics Committee has been asked whether the invoking of the Fifth Amendment rather than testifying before the Securities and Exchange Commission, by an Idaho attorney, both as an officer and as counsel for a corporation, constitutes an actionable breach of ethics.

This question would appear to involve most specifically Canon 15 - How far a lawyer may go in supporting a client's cause. Canon 29, upholding the honor of the profession, might also be considered in this problem.

Each of the Canons, we are all aware, requires both loyalty to the court and client as well as complete integrity in dealings with all persons. It would seem that Canon 15 most nearly fits this situation. We quote:

"The lawyer owes 'entire devotion to the interests of the client, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability,' to the end that nothing may be taken or be withheld from him, save by the rules of law, legally applied. No fear of judicial disfavor or public unpopularity should restrain him from the full discharge of his duty. In the judicial forum the client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land, and he may expect his lawyer to assert every such remedy or defense. But it is steadfastly to be borne in mind that the great trust of the lawyer is to be performed within and not without the bounds of the law. . ."

While it may be noted that the "taking of the fifth amendment" has in recent years acquired sinister implications or connotations, it remains a fundamental and constitutional right of every American so to do. This right should not be lightly withdrawn from us. We have no knowledge of the activities of the individual who was to be subjected to the inquiry, and, of course, we make no comment on this.

It is our opinion that the attorney is not subject to censure for invoking his rights under the Fifth Amendment to the United States Constitution.

DATED this 9th day of March, 1964.