

FORMAL OPINION NO. 9*

The Committee's opinion has been asked on two questions:

1. Is it a violation of professional ethics for a lawyer to permit a life insurance agent-friend to give the lawyer's name to the agent's insurance prospects who need wills drafted and other estate planning legal work?

Answer: Canon 27 of the Canons of Professional Ethics says this in part:

"It is unprofessional to solicit professional employment by circulars, advertisements, through touters, or by personal communications or interviews not warranted by personal relations."

Canon 35 declares:

"The professional services of a lawyer should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between a client and lawyer. A lawyer's responsibility and qualifications are individual. He should avoid all relations which direct the performance of his duties by or in the interests of such intermediary. A lawyer's relation to his client should be personal, and the responsibility should be directed to the client. . ."

The determination as to who needs a will and the desirability, form and content of estate planning services are largely legal questions.

An insurance agent who, in the course of a commercial solicitation declares that a given prospect needs a will, a buy and sell agreement and other estate planning services, and further suggests the name of a particular lawyer disserves the lawyer and the legal profession under both of the foregoing canons.

The following excerpts from Opinions of the American Bar Association Committee on Professional Ethics and Grievances are illuminating:

". . . The essential dignity of the profession forbids a lawyer to solicit business or to exploit

his professional services. It follows that he cannot properly enter into any relations with another to have done for him that which he cannot properly do for himself.

"It must therefore be held that the furnishing, selling or exploiting of the legal services of members of the Bar is derogatory to the dignity and self-respect of the profession, tends to lower the standards of professional character and conduct and thus lessens the usefulness of the profession to the public, and that a lawyer is guilty of misconduct when he makes it possible, by thus allowing his services to be exploited or dealt in, for others to commercialize the profession and bring it into disrepute." (Opinion 8)

". . . Lawyers should not aid or participate in any way in the practice of law by laymen or lay agencies, nor should they in any way sanction the same or profit therefrom. The conduct described in the question is improper, for the attorneys, by their action, are fostering the practice of law by a lay agency, as well as aiding therein and profiting therefrom.

"On the facts submitted, the lawyers are also indirectly obtaining business through solicitation and, unless warranted by personal relations, which this is not, all solicitation whether direct or indirect is prohibited by Canon 27." (Excerpts from Opinion 35).

It is our opinion that the proposed conduct is proscribed as solicitation and advertising and as exploitation through lay intermediaries.

2. Is it proper for an attorney employed part-time by a tax collecting unit of the State to advise his private clients on tax planning in the same field as his public employment?

Answer: The spirit and interpretation of Canon 6 (adverse influences and conflicting interests) make inadvisable this division of loyalties.

When wearing his official tax collector's hat, the lawyer's duty bids him fatten the Exchequer as much as possible. In his role

as private paid professional protector of the provident purse, the practitioner must preach and prescribe parsimonious participation in the painful process of taxpaying.

Even when the clients agree and where there is no question of confidential communications which must be protected, there remains the probability or possibility of having to contend for one client what his duty to the other requires him to oppose. (See Drinker, Legal Ethics, pp. 104-114).

From the standpoint of public confidence, there is also this consideration: A private client might well reason that the public official best knows the loopholes or escape clauses in the tax laws or in their administration, and if well enough paid, that the official-attorney could and should use that "inside knowledge" and official prestige to the client's advantage.

The State, the general public, the lawyer involved and the legal profession would not be profited by a client's boast that: "My tax lawyer has an inside seat--right under the Capitol Dome." We feel that the possible or probable conflict and the consequent detriment to the professional and general weal should be scrupulously avoided.

DATED this 11th day of March, 1958.

*See, DR 2-103(A), DR 5-105 and DR 9-101(B), Idaho Code of Professional Responsibility.