

FORMAL OPINION NO. 44

The following questions have been submitted to the Committee on Professional Ethics:

1. When an attorney is working for a law partnership as an employee on a salary and decides to withdraw from that employment to become associated with another attorney in the practice of law, is it proper for the employed attorney, without the knowledge of any of the partners of the firm for which he has been working, to remove files upon which he has been working from the offices of the partnership and contact the clients for whom he has been working while employed by the partnership, advising these clients that he is disassociating himself from the partnership, is beginning a practice elsewhere, and would like to continue doing the legal work for these clients which had been commenced while he was employed by the partnership?
2. Assuming that an attorney employed by a partnership has taken the steps set forth in the preceding question, and has obtained from the clients contacted permission to continue doing their legal work, what would be the proper disposition of fees collected by the employed attorney after leaving the employment of the firm for the handling of items of business which were commenced by the employed attorney during his employment by the firm?

There appears to be a legal question involved, but it is not the function of this Committee to render opinions on such questions.

The client or clients, are clients of the partnership, not of the employed attorney. The actions of the employed attorney appear to be a deliberate attempt to obtain the

clients for himself. It would seem apparent, therefore, that such actions on the part of the employed attorney would violate Professional Ethics Canon 7 which prohibits, "efforts, direct or indirect, in any way to encroach upon the business of another lawyer," and Canon 27 which declares it, "unprofessional to solicit professional employment by circulars, advertisements, through touters or by personal communication."

Mr. Henry S. Drinker in his work, Legal Ethics, at page 191, in discussing lawyers' obligations in relation to other lawyers stated, "Nor may one employed by another lawyer who contemplates leaving to practice independently suggest to a client of his employer that it will be to the client's advantage to substitute him." "One employed by a law firm who leaves it to engage in independent practice may send announcements to his individual clients, but not to those of the firm whom he has served; he need not, however, refuse retainers from the latter provided he did not directly or indirectly, solicit employment by them."

It is the opinion of the Committee that the first question must be answered in the negative.

The second question possibly becomes moot in view of the answer to the first question. However, if the work has been completed by the attorney, the division of the fee should be negotiated by the parties, bearing in mind that the employed attorney's actions in taking the files and soliciting the employment was improper. It is the opinion of the Committee that the employed attorney should receive no greater part of the fee than an amount which would equal his payment for such work were he still in the employ of the firm.

DATED December, 1964.

*See, DR 2-102(A), DR 2-103(A) and DR 2-107, Idaho Code of Professional Responsibility; I.S.B. Opinion No. 108 (August 28, 1981).