

Utah Ethics Opinions

1970.

2. USB EAOB Opinion No. 2

Ethics Advisory Opinion No. 2

Approved October 23, 1970

Summary: An attorney who primarily practices criminal law may accept employment seeking to recover stolen property under certain circumstances.

Opinion: May an attorney whose practice is predominantly in the field of criminal law ethically accept employment to seek, through his contacts, to recover stolen property for an insurance company, which company would pay the ransom money?

In determining what is and what is not the practice of law, for the purpose of measuring the unauthorized practice by laymen, one of the direct tests is: "If the work was being done by a lawyer, would it constitute practice of law?"

I apprehend that a great many matters undertaken by lawyers, and for which they are paid on a time or fee basis, are services which are not clearly the practice of the law, and that a similar service by a layman would not constitute the practice of the law. The inquiry in this matter seems to me to be in this area.

I cannot conceive that it is the practice of law to act as an intermediary in a ransom transaction nor to act as a private detective in ferreting out stolen property, and it would be my opinion that lay persons engaged in such activities would not be subject to the charge of unethical practice of the law. It is my opinion, therefore, that the activities suggested are not the practice of law in the true sense.

The question remains, is it ethical for an attorney to engage in such ancillary business activities? Here, I think the question becomes somewhat sticky. Would the attorney in such a case be entitled to claim professional immunity as to the information he obtains in view of the fact that it is probably not obtained in a true lawyer-client capacity? Would the attorney, as a private citizen, be open to charges if information came to him as to the identity of the culprit and he did not make a disclosure of this information? Would the attorney, as an attorney, have an obligation as an officer of the court to reveal evidence as to the identity and whereabouts of the culprit if he came into possession of this information as a private citizen engaged in the ransom activities on behalf of the insurance company? Finally,

would a disclosure of his ransom activities on behalf of the insurance company be a matter degrading to the bar and the honor of the profession in view of the fact that he is a lawyer?

Many other questions might also be raised, however, these are sufficient to demonstrate the problem of a lawyer engaging in business activities outside the legal field. ABA Informal Opinion 775 states that a lawyer may engage in an independent business: (1) if the separate business is clearly not necessarily the practice of law when conducted by a lawyer; (2) if it can be conducted in accordance with and so as not to violate the Canons; (3) if it is not used or engaged in such a manner as to directly or indirectly advertise or solicit legal matters for the lawyer as a lawyer; (4) if it will not inevitably serve as a feeder to his law practice; and (5) if it is not conducted in or from a lawyer's office.

References: ABA Informal Opinion 1161.