Utah Ethics Opinions

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8. USB EAOC Opinion No. 8

Ethics Advisory Opinion No. 8

Approved April 21, 1972

Summary: An attorney may refer a delinquent account to a collection agency if justified under EC 2-23.

Facts: You have asked whether or not it is proper for an attorney to turn his delinquent accounts over to a collection agency for collection. You have not stated so directly, but we assume the personal accounts to which you refer are, in fact, unpaid attorney fees for work which has been completed by you, and answer accordingly.

Opinion: Canon 14 of the Canons of Ethics governing suits against clients for fees, was originally adopted by the American Bar Association in 1908, and continued unchanged until the adoption of the Code of Professional Responsibility.

It was adopted by the Utah State Bar in 1936 and remained unchanged by the Utah State Bar until the adoption of the ABA Code of Professional Responsibility by the Utah State Bar in 1971. It provides as follows:

"Controversies with clients concerning compensation are to be avoided by the lawyer so far as shall be compatible with his self-respect and with his right to receive reasonable recompense for his services; and lawsuits with clients should be resorted to only to prevent injustice, imposition or fraud."

H. S. Drinker, the leading writer in the field of Legal Ethics, stated the proposition thusly: [Drinker, Legal Ethics at 171)

"He should sue for fees only when the circumstances imperatively demand it. He will find it wise, it is believed, in the long run, not to accept any fees from an honest client greater than the client thinks he should pay."

When the new Code of Professional Responsibility was adopted by the ABA, this concept was incorporated in Canon 2, EC 2-23 in the following language:

"A lawyer should be zealous in his efforts to avoid controversies over fees with clients and should attempt to resolve amicably any differences on the subject. He should not sue a client for a fee unless necessary to prevent fraud or gross imposition by the client."

The ABA Standing Committee on Professional Ethics has passed upon various facets of the problem including that of turning accounts to a collection agency for collection. Informal Opinion 751, held that it would not be improper to assign accounts to a collection agency if they met the tests of Canon 14.

A similar opinion from the state Bar of Colorado, Opinion 20, 1961, holds that it is not, per se, improper to assign accounts to a collection agency so long as the requirements of Canon 14 are observed.

We are aware of no opinions which have arisen under the Code of Professional Responsibility EC 2-23 since it has been formulated, but note that the language of EC 2-23 is somewhat more restrictive upon the attorney suing for his fee, than is the language of Canon 14 as it previously existed.

It would appear under Canon 14 or EC 2-23 of the Code of Professional Responsibility that not all unpaid attorney fees could or should be the subject of litigation in any event, and careful screening would have to be a matter of decision by the attorney. That decision could not be left to the discretion of a collection agency, and could not be a blanket decision in any event.

We would conclude, that so long as the requirements of EC 2-23 are met in each instance, an account might be turned over to a collection agency for handling.

The bar has long recognized the propriety of accepting promissory notes in payment of attorney fees. This body has approved the financing of legal fees using bank paper and credit cards.

A post-dated check falls in the category with other promissory notes in legal concept, and should receive no less recognition than other paper contractually inspired. We see no breach of ethics in the institution of a suit.

You have asked also whether the court has the authority or discretion to consider an alleged breach of ethics by an attorney appearing before it.

You have not stated a factual context in which such a matter may arise. However, clearly the court does have both the authority and the discretion to consider ethical matters. For example, a conflict of interest situation in a matter before the court is clearly cognizable by the court.

An interference with the proper processes of the jury under Canon 7, DR 7-108 would clearly be cognizable by the

court. As officers of the court, attorneys are answerable to the court for violations of ethical conduct in matters within the purview of the courts.

It may be that the court would prefer to refer the matter to the Bar for appropriate discipline, or in a proper case, the court might properly use its inherent contempt powers to enforce sanctions against an offending attorney, or utilize both procedures. In fact, a jurist member of the bar would have the obligation to report such matters to the bar. Rule IV, Canon 1, DR 1-103, Utah Rules of Professional Conduct.

A judge could not, of course, act on matters relating to ethics, unless the matter was before him officially. In any other matters, he would be acting as would any individual attorney vested with the obligation to report an infraction.