

Utah Ethics Opinions

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45. USB EAOOC Opinion No. 45

Utah State Bar

Ethics Advisory Opinion No. 45

Approved July 28, 1978

Summary: An attorney may own stock in or have an interest in a collection company but if he has an interest he may not represent the company in law suits to collect on assigned accounts.

Facts: The Ethics Committee has been asked to answer the following two questions:

(1) Is it unethical for an attorney to own stock or have any interest in a collection company?

(2) If it is ethical for an attorney to have stock or an interest in a collection company, can he then represent the collection company in a law suit to collect accounts assigned to that collection company.

Opinion: These questions were clearly addressed and resolved in Formal Opinion 225, (1941), of the ABA Ethics Committee. This opinion states as follows:

"It is unethical for a practicing attorney to participate in the collection activities or the management of an agency which solicits the collection of claims.

It is unethical for a practicing attorney who has a financial interest in a collection agency which solicits the collecting of claims to accept employment as attorney for the creditor when court proceedings are necessary.

It is not unethical for a practicing attorney to have a financial interest in a collection agency which solicits collection of claims if he does not participate in its collection activities and does not accept employment through the agency."

Therefore, the answer to the first question posed herein is yes, and a negative response is appropriate for the second question.

Opinion 225 has been reinforced in later decisions of the ABA. In Informal Opinion 600 (1962), an attorney had opened a business called "Lawyers Collection Services, Inc." He asked if he could handle suits for this company at

the request of the company's customers. The answer was no, based on Opinion 225. The Committee found that "the fact that the suits might be handled at the request of the company's customers would not alter the situation; the solicitation of business by the agency would constitute indirect solicitation of professional employment by the lawyer."

A distinguishable fact situation was presented in Informal Decision C-751 (1964). In this situation, all five attorneys in one community sought to form a collection agency for lawyers. They would assign their delinquent accounts to the agency and one of the member attorneys would bring suit in the name of the agency. The ABA Committee cautioned the attorneys concerning the limited circumstances where suit for a legal fee is justified. They then repeated the findings of Opinion 225, that an attorney may own an interest in a collection agency which solicits business but cannot participate in the management or activities of the agency and cannot accept cases from the agency. However, in the situation presented therein, they found that there was no solicitation as the customers were the agency owners themselves. Therefore, nothing unethical was found. The Committee did however, "suggest that in the public eye the association will be identified with the lawyer's of the community."

Rule Cited:

ABA Formal Opinion 225