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OFFICES ON CLIENT'S PROPERTY

Adopted July 20, 1962.

Addendum issued 1995.

Syllabus

It is not unethical for a firm of attorneys to have its offices in the business premises of a financial institution which is a client of the firm even though one of the attorneys may hold an executive position in the institution. However, in such a situation, the firm of attorneys will have to use great care to be certain that the close connection with the financial institution is not in any way used, directly or indirectly, for the purpose of soliciting professional employment for the law firm.

Facts

A firm of attorneys has its offices in the business premises of a financial institution. One or more of the members of the firm hold important executive positions in the institution. The firm is the legal representative of the institution. A portion of the firm's business consists of examining real estate titles for the institution, preparing instruments of conveyance and security, and closing loans.

Is such an arrangement proper under the Canons of Ethics?

Opinion

Canon 27 of the Canons of Professional Ethics prohibits the solicitation by a lawyer of professional employment. The ABA Committee on Professional Ethics has, in several opinions, warned against the indirect solicitation of business through a relationship which an attorney may have with a lay agency. (See ABA Committee on Professional Ethics Opinions Nos. 31, 35, 57 and 225.) The following admonition of the ABA Committee in its Opinion No. 57, quoted in Opinion No. 7 of this Committee, is directed to this problem and is worthy of being quoted again:

It is not necessarily improper for an attorney to engage in a business; but impropriety arises when the business is of such a nature or is conducted in such a manner as to be inconsistent with the lawyer's duties as a member of the Bar. Such an inconsistency arises when the business is one that will readily lend itself as a means for procuring professional employment for him, is such that it can be used as a cloak for indirect solicitation on his behalf, or is of a nature that, if handled by a lawyer, would be regarded as the practice of law. To avoid such inconsistencies it is always desirable and usually necessary that the lawyer keep any business in which he is engaged entirely separate and apart from his practice of the law and he must, in any event, conduct it with due observance of the standards of conduct required of him as a lawyer.

The facts indicate that the law firm has a very close connection with the financial institution in whose offices it conducts its practice. The close physical arrangement may, of itself, cause the lay agencies to serve as "feeders" of professional employment to the firm, in violation of Canon 27. A heavy duty rests upon all members of the law firm, and particularly upon the lawyer who holds an executive position with or controls the lending institution, to see that no such violation is allowed to occur. All persons connected with the lay agency must be made to clearly understand that the law firm is not associated with the lending institution and that it would be unethical for the members of the law firm to take advantage of the close relationship for the purpose of providing the law firm with additional professional employment.

The question is whether in fact indirect solicitation would be probable. If, for example, the financial institution is a bank, industrial bank, or savings and loan association, having a ground floor office which is visited by large numbers of the public, and if it contains signs identifying the firm, or identifying individuals as lawyers, there would surely be a dangerous possibility of solicitation, and perhaps advertis-

ing. Borrowers might infer that employment of the firm was necessary or at least highly desirable, in order to obtain loans. The firm should move its offices to another part of the building.

If, on the other hand, the financial institution is a life insurance company, or some other entity having an upstairs office which is not visited by large numbers of the public, the possibility of indirect solicitation is probably remote. There may be difficult borderline cases between these two extremes.

On carefully reviewing the situation, the members of the law firm may determine that it is impossible to effectively avoid violations of Canon 27 while the firm is practicing in the same premises as the lending institution with which one of its members is so closely associated. While this Committee believes that the relationship, of itself, does not automatically result in unethical conduct, it calls attention to the duty of the lawyers to carefully conduct their practice in such a manner that any such violations will be avoided.

1995 Addendum

This Opinion was based upon the Canons of Professional Ethics, the predecessor to the Code of Professional Responsibility. The Colorado Rules of Professional Conduct became effective on January 1, 1993, replacing the Code of Professional Responsibility. While the language of the Rules is somewhat different from the Code and the Canons, the Ethics Committee considers this Opinion to continue to provide guidance to attorneys in this area. Attorneys are cautioned to review The Colorado Code of Professional Responsibility (found in the *Colorado Ethics Handbook*), to update the research contained in this Opinion and to conduct any independent research necessary.

Relevant provisions of the Colorado Rules of Professional Conduct, which should be examined together with this Opinion, are Rule 5.4(a) (regarding division of fees with non-lawyers); Rule 7.2 (regarding advertising); Rule 7.2(c) (regarding giving value for recommending a lawyer's services) and Rule 7.3 (regarding direct contact with prospective clients).