

25**USE OF ATTORNEY'S SIGNATURE ON
COLLECTION CASE SUMMONS**

Adopted August 25, 1962.

Addendum issued 1995.

Syllabus

It is unethical for a lawyer to consent to or acquiesce in an arrangement whereby his name or signature appears on a summons as attorney when the summons is in fact prepared by his client, a collection agency, and not under his direction and control.

Facts

An attorney represents a collection agency. The collection agent frequently finds it necessary to file suit on claims assigned to it. Lay employees of the agency, with the consent of the attorney, prepare the Justice Court summons in each such case within that court's jurisdiction and cause the attorney's name or signature to be placed on the summons, together with the telephone number of the agency. Defendants in the cases frequently call the number shown on the summons purporting to be the attorney's number and lay employees answering such calls fail to disclose the fact that they are not attorneys and instead give the impression that it is the attorney's office that has been contacted. The attorney representing the agency has no knowledge of the case at all until just prior to the time it goes on trial. A substantial portion of the cases are settled before such time and consequently never come to the attention of the attorney.

Is the attorney in violation of the Canons of Ethics?

Opinion

The attorney is in violation of the Canons of Ethics.

The collection agency is practicing law in the preparation of the summons and subsequent negotiations with the respective defendants. The attorney has allowed his name to be used by a lay agency in direct violation of Canon 35 (prohibiting lay intermediaries) and Canon 47 (aiding the unauthorized practice of law).

Furthermore, Canon 9 may also be involved, since it provides in part that "it is incumbent upon the lawyer most particularly to avoid everything that may tend to mislead a party not represented by counsel, and he should not undertake to advise him as to the law." The lawyer has consented to an arrangement tending to mislead defendants in the cases filed by the collection agency. The actions or statements of the lay employees of the agency in dealing with a defendant after a suit is filed (purportedly by the lawyer) are beyond the knowledge or control of the lawyer, and this very fact is sufficient to condemn the arrangement under Canon 9.

The lawyer is also in violation of Canon 22 requiring candor and fairness in dealings with courts and other lawyers. The filing of a summons showing the lawyer's name is a representation not only to the defendant but to the Court that the lawyer has knowledge of the case and that the summons was drawn by him or drawn under his direction and control.

We, therefore, conclude that the conduct of the lawyer is unethical. The mere acquiescence by the lawyer in an arrangement whereby his name or signature appears on pleadings or other documents not prepared by him, and not under his direction and control, is sufficient without other facts to render the conduct unethical. Although not directly in point, we refer for instructive purposes to our prior Opinion No. 7 regarding the relationship between attorneys and collection agencies. See also Opinion No. 35 of the American Bar Association Ethics Committee.

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 1.1 (requiring competent representation); Rule 1.3 (reasonable diligence required in client representation); Rule 1.6 (requiring confidentiality by lawyer and lawyer's employees and associates unless disclosure permitted by client); Rule 3.3 (prohibiting knowingly false statements of material fact or law to a tribunal); Rule 4.1 (prohibiting knowingly false statements of material fact or law to third persons); Rule 5.3 (regarding the use of non-lawyer assistants and attorney responsibility for non-lawyer assistants); and Rule 5.6 (prohibiting lawyer assistance to non-lawyers in the unauthorized practice of law).