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# Do Business and Law Mix?

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"It is not necessarily improper for a lawyer to engage in a business, but he must conduct it in a manner not inconsistent with the Canons."[1]

The foregoing statement, as will be seen upon perusal, would leave one with the inference that while there is nothing *per se* wrong with a lawyer engaging in commercial enterprise, still such a lawyer would be bound to exercise a greater degree of care in the conduct of such an enterprise than would the ordinary businessman. The subsequent opinions based upon *Canon 27*,[2] which is the one prohibiting advertising, direct and indirect, all bear out the thought that while a lawyer may own a business, still he must separate and place a wall between his business self and his legal self in order that his legal self will be, like Casesar's wife, above suspicion. The problem presented by *Canon 27* is like all other moral questions, a matter of degree.

For example, it is provided that it is not improper for an attorney to accept employment as a claim adjuster from a corporation which adjusts claims, and then also to represent it in litigation.[3] The rationale given here is that the employment as a claim adjuster did not exploit the lawyer's professional services, nor did the lawyer share his professional earnings with the corporation. However, the Committee on Professional Ethics and Grievances has also ruled that it is unethical for an attorney to participate in either legal or collection activities of a business in which he has a financial interest, although the lawyer may own such interest in the agency if he does not participate therein, and nothing is done to create the impression that the agency enjoys the benefit of the attorney's advice.[4] The Committee stated:

> We are of the opinion that a practicing lawyer cannot participate in the collection activities or the management of an agency which solicits the collection of claims. If a lawyer is to participate in such activities, he must withdraw from the practice and refrain from holding himself out as a lawyer.[5]

The committee has also ruled that it is improper for an attorney who does nothing but adjusting, to have his name appear on law firm stationery as adjuster, and on the door of the firm as ad-

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[1] OPINIONS OF THE COMMITTEE ON PROFESSIONAL ETHICS AND GRIEVANCES, American Bar Association (1947) Canon 27, Opinion 57, p. 150.
[2] *Ibid.*
[3] *Ibid,* Opinion 96, p. 208.
[4] *Ibid.,* Opinion 225, p. 447.
[5] *Supra,* Opinion 225, p. 449.

juster, who in case of suit, recommends the firm upon whose stationery, and upon whose door his name appears.[6]

It will be noted that there appears to be some inconsistency in the opinions of the Committee on Professional Ethics and Grievances in that it is proper under their rulings for an attorney to adjust and prosecute a claim if an adjustment fails, while, on the other hand, it is improper for an attorney to operate an adjustment business from a law office where his name appears on the door and on the law firm stationery as adjuster, and he recommends the firm in case of suit. The inconsistency, like so many inconsistencies of law, is more illusory than real when we consider the basic reason for the rule. The foundation for the rulings on this branch of professional ethics appears to hinge on a determination of the question: Is the commercial pursuit of the lawyer used as a means of indirect solicitation for his professional life? If the attorney engaging in a business uses that business indirectly to solicit professional employment, he is violating *Canon 27*.[7]

## Demarcation of Conduct Difficult

All of us would recognize the clear violation of the particular provision of the code of ethics here under consideration. There is no doubt that an attorney could not advertise an abstracting business with his name prominently displayed as attorney at law immediately thereunder, but, as in so many situations, it is sometimes difficult to ascertain where the clear violation ends, and the proper conduct of a non-professional enterprise begins.

There have been a few cases which have considered this question. In one of them, an attorney sent out 5800 postcards under the name "Libarian Tax Service." These cards contained statements that this tax service had a competent staff well able to take care of income tax problems, and was under the direction of Stephen Libarian. Mr. Libarian's law office was located in Los Angeles, where he maintained large signs stating that free parking was available, and further informing the public that Stephen Libarian was an attorney. The court in condemning all of these practices held that the purpose of the postcards was the solicitation of legal business, and that the gentleman's activities merited a one-year suspension from the bar.[8]

In another situation, an attorney was employed by a collection agency as office girl and stenographer at the munificent salary of $80 per month. Her contract further provided that she could engage in the private practice of law, and was to receive from the collection agency $5 and $10 per judgment collected by them. The members of the agency completed all forms preparatory to instituting suit on any case sent to them. The respondent signed the

[6] *Ibid.*, Opinion 214, p. 427.
[7] *Ibid.*
[8] Libarian v. State Bar of California, 25 Calif. 2d 314, 153 P. 2d 739 (1944).

papers and proceeded to take them to court. This attorney was found guilty of professional misconduct in lending her name to an organization which was engaged in the unauthorized practice of law.[9] So, also, was an attorney the subject of censure where he organized a legitimate collection agency with offices located in several states, but the letterheads of which agency contained his name as attorney, giving, so the court felt, the impression that he was licensed to practice in all of the states in which the collection office was located, when, in fact, he was licensed only in New York.[10]

An interesting situation arose in Minnesota. Here, the respondent attorney was employed as vice-president of a bank at an annual salary. The terms of the contract with the bank provided that he was to be permitted to practice law, but he agreed to turn over all fees received to the bank. The respondent sent out his opinions on bank stationery, although he conducted his legal business in a separate room. The court, in ruling on this matter, held that the conduct of the attorney amounted to the corporate practice of law, and the respondent was severely censured.[11] Another enterprising Minnesota lawyer was engaged in the real estate business, sometimes for himself, and sometimes for others. The court said that the attorney must exercise a higher degree of care than that exercised by laymen in the conduct of their private affairs.[12]

## Doing Proper Action Improperly

In all the cases cited, it appears that the attorney, although doing that which would be normally proper, by his method of operation made it improper. Many attorneys, as we know, do engage in some non-professional side line of a commercial nature, and it is difficult to know when they may be unconsciously stepping near the line of a violation of *Canon 27*. It is perfectly clear that an attorney could not engage in a business pursuit which would conflict as such with his legal profession. For instance, it would be highly improper, it seems to the writer, for an attorney, if he were also a real estate broker, to sell a piece of property and then in the very next breath, examine the abstract to the property. However, the problem tends to shade more to the gray when we examine the situation of an attorney who has his desk in a real estate office, but has no financial connection with it. In such a case, where a piece of property is sold by the real estate broker, that broker recommends the attorney as the proper person to examine the abstract . Whether or not the attorney is violating the *Canons of Professional Ethics* in the above example is rather hard to ascertain. The writer queried several of his brethren at

[9] Yount v. Zarbell, 17 Wash. 2d 278, 135 P. 2d 309 (1943).
[10] Application of J. W. Roe Co., Inc. in re Schwartz, 181 N. Y. Supp. 87 (1920).
[11] *In re* Otterness, 181 Minn. 254, 232 N. W. 318 (1930).
[12] *In re* Waleen, 190 Minn. 13, 250 N. W. 798 (1933).

the bar, and they expressed practically an equal division of opinion as to whether or not the attorney should accept the abstract. It is the opinion of the writer that there is nothing improper in the above situation, but that, as in the case of a trustee, the burden would be on the attorney to prove the fairness of his transactions if a question were raised.

MASS. CASE SHEDS A LITTLE LIGHT

Perhaps the best reasoned case which was found is *In Re Thibodeau.*[13] Here, the respondent, a duly licensed attorney and a partner in a prominent law firm, organized what he called the "Automobile Legal Association." This association had a sales manager and a good many salesmen, with principal offices located in New England, New York and New Jersey. The association advertised continuously. For an annual fee, among the services which they provided were road, garage, and an emergency medical aid in case of accident. Their articles of agreement provided further that they would aid in the procurement of bail bonds, and that if a member were charged with drunk or reckless driving, or with manslaughter, they would pay the fee, within certain set limits, of the attorney hired to defend the member. The association also agreed to pay the fee of any attorney hired by a member in case of property damage actions brought against the customer. The association furnished a list of attorneys to its members, but specifically stated therein that the members need not hire these attorneys. The attorneys' list also contained the statement that the association did not hold itself out as qualified to practice law. On the attorneys' list were the names of the respondent's partner, as well as a partner's son. The offices of respondent's firm were located next door to the Automobile Legal Association. There was, however, no adjoining entrance to the two suites. The evidence produced indicated that occasionally, members of the service organization went into the law office of respondent's partners; some few of them became clients. The court in considering the problems raised by the above situation ruled:

> (a) It cannot be doubted that the solicitation by a lawyer of employment in legal matters by means of salesmen and advertising here disclosed, would be a gross impropriety which would at once subject him to discipline. On the other hand, commonly, a member of the Bar is free to engage in commercial pursuits of an honorable character, and to advertise and to extend his purely mercantile business honestly and fairly by ordinary commercial methods.[14]
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> (b) In our opinion, the business conducted by the respondent under the name of the Association is not the practice of law. The respondent performs none of the legal work for which the Association pays. He does not employ the lawyers who do the work. He does not direct or control them. All the respondent does is to furnish a

[13] 295 Mass. 374, 3 N. E. 2d 749 (1936).
[14] *Supra,* p. 750.

list of competent attorneys which subscribers may use if they desire, and to pay such attorneys as subscribers employ. Any layman could lawfully do these things . . . As the respondent's business, conducted under the name of the Association, is not the practice of law, it follows that the solicitation of subscribers and the presentation to the public of the advantages of the Association are not, in themselves, improper.[15]

(c) [As to members of respondent's law firm] this presents a situation of some delicacy which could easily become the subject of abuse. Confining ourselves strictly to the facts found, however, we incline to the opinion that no present impropriety is shown. It does not appear that the respondent's law firm derives any direct advantage in its practice from the Association business of the respondent, or that the Association is conducted with that end in view. The Association business is a genuine business. There is nothing to indicate that the precautions taken to separate the Association from the law firm are not real, or that they cover any subterfuge. Any indirect profit or advantage which the firm receives from the publicity given the Association is very small and incidental, and, apparently, no greater than that which any firm of lawyers might receive through the connection of its members with substantial business enterprises such as banks or insurance companies, or through its members, doing business as trustees, receivers, or in like capacity. It has never been thought improper for a lawyer to extend his acquaintance, or to enhance his prestige in these ways, even though it has a tendency to bring him to the attention of possible clients and thus to increase his law practice.[16]

It will be noted that the court in the foregoing opinion, first states the general rule that it is perfectly proper for an attorney to be associated in a business enterprise so long as the enterprise does not entail, nor serve as an entree toward getting new clients for the attorney participating therein. The test in determining whether, in a given instance, the attorney's activities come within the ban is pragmatic. The court says the business is genuine, and any benfits which come to the attorney's law firm are indirect. The court leaves plain, however, the inferences that the attorney may become guilty of a violation of professional ethics if he does not conduct himself in relation to his two interests with the utmost propriety.

## ONLY ONE COLORADO CASE

There is, so far as the writer could discover, only one Colorado case which bears on the point at issue. It would seem to follow the test laid down by the Massachusetts court.[17] A Colorado state senator was found guilty of unprofessional conduct, when as an attorney, he accepted retainers from certain insurance companies which were being investigated by a committee of which he was chairman in the state senate.[18] The court points out that it is no violation of ethics for a state senator to practice law. The violation lay in his combination of the jobs.

[15] *Supra*, pp. 751-752.
[16] *Supra*, p. 752.
[17] *In re* Thibodeau, *supra*, n. 13.
[18] People v. Nolan, 100 Colo. 275, 67 P. 2d 76 (1937).

In attempting to draw a conclusion from the cases and opinions, it would seem that in order to avoid a violation of *Canon 27*, the attorney must first be sure that his non-professional enterprise is not a mode whereby he engages in indirect solicitation for clients, and second, that, as an attorney, he is not the arm of some lay organization which through him, is, in effect, practicing law.

In summary, it is submitted that any attorney may engage in a commercial enterprise without fear of violating *Canon 27*, provided such enterprise is kept entirely separate from his legal life, and provided that he acts with the highest degree of rectitude in the conduct of his business enterprise.

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## WILLFUL WAYS

The following clauses appear in a will uncovered by John G. Reid and Jean S. Breitenstein of Denver. For "reasons of delicacy" the names and dates have been changed, and we leave it to you and Hu as to whether or not they should be included in *the* model will:

> * * * Third, I give, devise and bequeath to Mariposa Maria Ruperta Sanchez, widow of the late Ricardo Garcia and her and my children, Luisita, born August 12, 1928, Estrellita, born Sept. 29, 1931, Ricardo born June 30, 1934 and Ruperto, born December 1, 1937 the other one-half of all my real and personal property after the payment of my debts and the expenses of administration, the said parties to share equally in said amount and in the event that after this date, and within nine months after my death there shall be born to said Mariposa Maria Ruperta Sanchez any child or children, then said child or children to share equally in said one-half of property as fully as those hereinbefore by name mentioned.
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> * * * Seventh, in the event, that said Leopold Sachs should decline to serve as such executor, then I hereby authorize him to nominate and select some fit and proper person to serve as such executor and ask the Court to appoint the person so selected, excluding the following named persons from his selection: Wm. H. Stein, Jesus F. Stein, John Thomas, Nathan Baer and George E. Westerbay. As I herein have requested, that a copy of this my last will and testament be sent to my sister, Fraulein Malivine Gross, I deem it necessary, to state here that I am not married to the herein mentioned Mariposa Maria Ruperta Sanches and to state also, that I, at no time have made to her any promise of marriage. I deem these statements necessary so to avoid creating in my sister's mind the belief that I have tried to deceive her in regards to my personal affairs or relations as I, for reasons of delicacy, due her sex and position and out of respect to her, never informed her of the existence of these my children for all of whom I hereby bespeak her good will and some part of that affection which she, at all times, has so unlimitedly bestowed upon me and I add at the same time the request, that she may not, from the nature of the relations existing between me and the mother of these children, be brought to form a hasty, prejudiced and therefor unjust judgment of and against the said Mariposa Maria Ruperta Sanches and I also pray her, my sister's forgiveness for having omitted to inform her previously of the existence of these children, my reasons for this I have now here stated. * * *