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Professional Ethics

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PROFESSIONAL ETHICS

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The Committee on Professional Ethics reports the following statements of questions submitted to it with regard to professional conduct and its opinions thereon:

STATEMENT
A.

An attorney, A. B., is licensed as a private detective, and, in connection with his law office, owns and conducts a private detective and collection agency under the name of "A. B. Investigation Service," advertising and sending out solicitors, to solicit collections and investigations in the name of "A. B. Investigation Service." Many of the persons so solicited have matters requiring the service of an attorney, either in the courts, or in office matters, and the attorney, through the contacts so made, secures employment in such matters from the persons so solicited.

QUESTION

Does the above stated arrangement and manner of doing business violate professional ethics?

OPINION

In the opinion of the Committee, yes.

As this Committee regards the statement the "Service," if not actually organized to drum up legal business for the attorney, is operated to do so. The rule against solicitation is violated.

In American Bar Association Journal for May, 1932, page 340, the Association Committee on Professional Ethics and Grievances, passing upon a question of like nature, in language appropriately covering the situation, says,

"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 law and he must, in any event, conduct it with due observance of the standards of conduct required of him as a lawyer."

STATEMENT
B.

An attorney, being indebted to a mercantile company upon a note, secured by a chattel mortgage upon personal property, is unable to pay the

note. The mercantile company insists upon payment and threatens foreclosure, and then sends the lawyer to an affiliated loan company stating that the loan company will loan him sufficient money to pay the debt. The attorney thereupon applies to the loan company for, and obtains a loan of less than $300, repayable in monthly installments, secured by a note and chattel mortgage to the loan company upon the same personal property, with the proceeds of which loan he discharges his debt to the mercantile company.

The loan company, however, charges the attorney an illegal rate of interest on the loan, but the attorney, at the time of obtaining the loan, did not question the rate of interest. He says he was unable to obtain the money elsewhere and was compelled to accept the loan at that rate of interest or lose the property on the mortgage to the mercantile company. By reason of the high rate of interest charged by the loan company, its note and chattel mortgage are void under the provisions of Chapter 63, C. L. 1921.

The attorney is unable to repay the first installment of the loan to the loan company, and applies to the loan company for a short extension of time, which is refused. The loan company then tries to take possession of the property under the void chattel mortgage. The attorney refuses to surrender the property and thereafter advises the loan company that, inasmuch as it refused him a short extension of time, and tried to take possession of the property, he will rely on the provisions of the "loan shark" law to defeat the mortgage.

Thereupon the loan company refers the matter to its attorney, and its attorney, on behalf of the loan company, then offers to credit on the note the amount of the usurious overcharge, thus purging the loan of its usurious features. The borrower, however, says that, being in straitened financial circumstances, and being afraid that, in view of the controversy that has arisen, the loan company will take advantage of its first opportunity to declare a technical default and declare the whole note due, if it is purged of the usury, refuses to make any new agreement which will have the effect of purging the usury. He advises the loan company's attorney, however, that he recognizes a moral obligation to, and will, repay the amount actually borrowed, as soon as he is able to do so, but in view of the attitude which the loan company has exhibited, is afraid to, and unwilling to, convert the moral obligation into a legal obligation. The loan company's attorney takes the position that it is the borrower's duty, as an attorney, to convert the moral obligation into a legal obligation, by giving a new note from which the usurious overcharge is excluded. The borrowing attorney says he intends to discharge his moral obligation by repaying the loan company the amount actually borrowed, as soon as he is able to do so, but that, in the meantime, the obligation will have to remain a moral obligation, and he will not give a new note.

QUESTIONS

1. Under the above state of facts, is it the duty of the borrowing attorney to convert the moral obligation, which he acknowledges as such, into a legal obligation, waiving the protection of the "loan shark" law, and giving a new note for the amount borrowed, or may he simply let the matter rest in statu quo, as he proposes to do, until he is able to, and does, repay the loan?

2. If the borrowing attorney converts his moral obligation into a legal obligation by giving a new note for the amount borrowed, is it his duty to give security for the new note?

3. Under the above state of facts, is the attorney for the loan company, who is informed of all the facts, justified in advising the loan company to bring suit on the void note, knowing that it is void, but believing that the borrowing attorney will execute a new note to avoid the embarrassment of being sued?

OPINION

1, 2. In the opinion of the Committee the borrower attorney is not from the standpoint of professional ethics under any obligation to prejudice himself by surrendering in whole or in part a control of the situation arising from the unlawful act of the loan company; but he will remain in honor bound to pay the debt.

3. It is the opinion of the Committee that an attempt to coerce by threatening suit on an admittedly unenforceable claim partakes of the nature of blackmail and is reprehensible. See Canon 30.

LAW presupposes ideas, however rudimentary, of justice. But, law being once established, just, in matters of the law, denotes whatever is done in express fulfillment of the rules of law, or is approved and allowed by law. Not everything which is not forbidden is just. Many things are left alone by the state, as it were under protest, and only because it is thought that interference would do more harm than good. In such things the notion of justice has no place * * * The words "just" and "justice," and corresponding words in other tongues, have never quite lost ethical significance even in the most technical legal context.

The only road to advancement is to do your work so well that you are always ahead of the demands of your position. Our employers do not decide whether we shall stay where we are or go on and up; we decide that matter ourselves. Success or failure are not chosen for us; we choose them for ourselves.—*Hamilton Wright Mabie.*

True contentment depends not on what we have. A tub was large enough for Diogenes; but a world too little for Alexander.—*Charles Caleb Colton.*

The successful man takes plenty of time for thought. He carefully looks the ground over, searches for weak and strong points, then adjusts himself to the needed conditions.—*Dresser.*