

January 1926

Opinions by Committee on Professional Ethics

Denver Bar Association Record

Follow this and additional works at: <https://digitalcommons.du.edu/dlr>

Recommended Citation

Opinions by Committee on Professional Ethics, 3 Denv. B.A. Rec. 12 (1926).

This Article is brought to you for free and open access by the Denver Law Review at Digital Commons @ DU. It has been accepted for inclusion in Denver Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, dig-commons@du.edu.

A. Now, Frank, why bring that up against a fellow?

The court ruled under the statutory provision, that being a professional gambler, Mr. Judy was privileged to have the challenge limited to that ground. He was so challenged, excused from the jury panel and thus saved humiliation before his friends.

COURTS AND SALARIES

By practically a unanimous vote the national senate has passed a measure calling for increase in the salaries of judges of federal courts and it is believed that the house will follow suit at this session. The public that understands will support congress in this matter. There is such a thing as a false economy. The country can well afford to pay its officers in responsible places their just hire. Honor there is in sitting on the bench, but honor does not meet the high costs of living and it costs not a little to maintain that honor nowadays. Furthermore the duties and often the responsibilities of the courts have been increased due to new conditions and experiments.

Salaries, ranging from \$20,500 paid to the chief justice of the high tribunal

at Washington down to \$10,000 for a federal district judge, are provided in the bill and they are not unreasonable. The increase will not be felt by the "overburdened taxpayer."

This brings us to a matter nearer home, that of the pay of local judges on all the benches or divisions. The salaries now paid are wholly inadequate. The probate judge with an overturn yearly in his court of a number of millions of dollars, does not receive for his year's salary as much as the attorney of a moderate estate receives for putting it through probate. A District court judge gets a miserly \$4,000 a year and he is expected to be a wise and upright judge, versed in the law and to render justice at all times. A judge of the Supreme court is given \$5,000 to maintain his dignity. If lucky he may receive a pension.

The public gets what it pays for and we fear the judiciary is not often an exception.

A revision upward in no niggardly fashion and non-partisan nominations of judges are two requisites in Colorado, if the courts are to be held in respect. The two combined would constitute a real reform.—Rocky Mountain News, May 8, 1926.

Opinions by Committee on Professional Ethics

May 21, 1926.

To Denver Bar Association,
Denver, Colorado.

The committee on Professional Ethics reports the following statements of questions submitted to it in respect of professional conduct and its opinion thereon:

I.

STATEMENT

Question: In the opinion of the Committee on Professional Ethics would the circulation by an attorney at law of the following letter generally be considered ethical?

Dear Sir:

A short time ago the writer attended at _____, a stockholder's meeting of the _____ Company. While there he had the opportunity to investigate somewhat the records of this Company with particular reference to sales of the capital stock made by the directors thereof

because of failure to pay assessments levied on said shares of stock.

In the writer's judgment there is a fair chance to recover this stock by suit. He is willing to take it on a contingent fee of 50% of the amount of stock involved.

As the matter now stands your stock has been sold and your rights thereto have been forfeited by the Company. You are no longer carried on the records of the Company as a stockholder and apparently have done nothing to assert your rights which the Company long ago forfeited. Several years ago, according to the records of the Company..... shares of stock were sold because of your failure to pay the first assessment. The writer has conferred with a number of people whose stock has been sold for failure to pay either the first or second assessments and who do not want to put up any money to bring this suit for the purpose of

having their rights tested, yet they are willing to share with the writer whatever is obtained by litigation.

Enclosed find form of contract in triplicate under which the writer is willing to undertake to make recovery of the shares of stock formerly belonging to you and which have been forfeited. No suit will be instituted unless enough stockholders of the class above described take an interest in the matter and sign up the contracts, making it worth while for the writer to proceed with the matter. In the event litigation is brought about in an attempt to recover for you your rights, an appeal will doubtless be taken to the Supreme Court of the State of..... This would require much work, all of which is provided for in the contract form enclosed.

If you wish the writer to proceed under the terms of the above agreement, sign all three copies and return the same immediately in the self addressed envelopes. In case I obtain enough contracts I expect to institute suit just as soon as it is possible to go to and employ co-counsel and get suits filed. Immediately upon receipt of the three contracts signed by you I shall have them executed by the Bank and also execute them myself, and return one copy to you. Please be sure and forward the stock so that it may be put in the First National Bank of and held under the terms of the enclosed contract. If you want me to handle this business act immediately.

OPINION

In the opinion of the Committee the circulation of such a letter would be unethical.

It is the opinion of the Committee that, except in rare cases where, for example, ties of blood, personal relationship or trust obligations make it his duty to do so, it is professionally improper for an attorney to volunteer to a stranger facts within the knowledge of the attorney and properly learned by him upon which claims of substantial right may be urged and prosecuted. The question here does not disclose any of the exceptional circumstances. The letter seems to the Committee to be in violation of No. 27 of the Canons of Ethics in the Appendix to the Rules of the Supreme Court, 1924, where we read,—“But solicitation of business by personal communications, not warranted

by personal relations is unprofessional;” also to be in violation of the spirit of No. 28 of said canons since it contemplates the stirring up of litigation and that, impliedly at least, at the expense of the attorney.

The committee does not express any opinion on the legality of the contract referred to.

Respectfully submitted, E. D. Upham.
Chairman for the Committee.

II.

STATEMENT

Two attorneys enter into a written contract with a claimant to collect a supposed claim against a fellow member of the bar and others on a fifty per cent fee basis; no relationship of attorney and client is involved between the lawyer and claimant. The contract recites that the claim is desperate and doubtful. No suit is contemplated, and none is commenced; in fact, the attorneys know that there is no basis for suit. After using their influence to summon one of the lay defendants before the chief of police in an unsuccessful effort to frighten him into a settlement, the attorneys then threaten their fellow member of the bar with discipline before the Grievance Committee, unless he makes settlement. Upon his refusal, they drop the matter.

Question: Is it not unprofessional to thus threaten a fellow member of the bar under such contingent contract, where no relationship of attorney and client is involved, and no basis for suit exists?

OPINION

It is difficult to give a categorical answer to the question as formulated by the inquirer. The contingent character of the contract and the want of relationship between attorney and client are immaterial. The question propounded does not call for an opinion on the conduct of attorneys who attempt to frighten a defendant into a settlement by using their influence to summon him before the chief of police.

It is the opinion of the Committee, however, that it is unprofessional for an attorney to threaten a fellow lawyer, for the purpose of obtaining a settlement from him, with discipline by the Grievance Committee; and that, if the claim in question is, in fact, known by the attorney to be without basis for suit, the offense is so much the greater.

Respectfully submitted, E. D. Upham,
Chairman for the Committee.