LEGAL ETHICS COMMITTEE OPINIONS FOR 1962

OPINION NO. 1 OF 1962

The Committee was asked for its opinion concerning the propriety of a lawyer writing a letter about a pending case to the Judge in the case, without sending a copy to, or otherwise notifying, opposing counsel.

The Committee has determined that, because of the particular circumstances involved in the case in question, the lawyer is not guilty of violation of either Canon 22 or 27 of the Canons of Professional Ethics.

However, the committee feels that no attorney should engage in any act which, inadvertently or otherwise, subjects him to suspicion of violation of the Canons of Ethics (as a letter to a court regarding a case pending before it may do when no copy is sent to opposing counsel). A resulting charge of violation of the Canons of Ethics, alone, is harmful to the bar and to the particular attorney.

In addition, the committee believes that any communication by a lawyer to a Judge, out of the presence of opposing counsel, or in writing without a copy to opposing counsel, regarding the facts or law in a case pending before that Judge's court, may unfairly place the Judge in a difficult and tenuous position; and that the lawyer, as an officer of the court, owes the Judge an obligation to avoid subjecting the Judge to such situations.

OPINION NO. 2 OF 1962

The practice of law in a corporate form creates grave problems for the legal profession.

The relationship of attorney and client traditionally has been an intimate, personal, confidential one, in which the client can safely divulge all facets of his personal or business problems, knowing that the attorney will keep the confidence inviolate. A lawyer corporation, even with all safeguards written into the proposed legislation, would destroy this all important confidence in the minds of the average prospective client.

Furthermore, the Courts have held that a corporate or association officer cannot invoke a constitutional privilege against disclosure of any corporate records. It is possible that disclosure of confidential attorney-client matters and an attorney's working papers can be forced from a lawyer corporation.

The power to regulate the practice of law presently is vested in the Supreme Court of Indiana. Lawyers are officers of the Court, first and foremost. The Supreme Court establishes the moral and educational requirements for admission to practice law, through its Board of Examiners. Each applicant for admission to the bar is carefully examined as to his legal knowledge and moral character by this arm of the Supreme Court. The Disciplinary Commission of the Supreme Court polices the profession by investigating complaints of improper conduct by lawyers. The power to discipline, suspend and disbar a lawyer is vested in the Court.

In short, the legal profession is subject to the control and regulation of the Supreme Court, and not the legislature. Abrogating even a part of the Court's power to the legislature would, in the opinion of the Committee, be a serious mistake. Making the legal profession subject to the whims of legislators could have grave consequences. (Not only would the enactment of legislation regulating the legal profession be unwise, it may be unconstitutional. The Committee did not base any part of the Opinion on the question of constitutionality, but felt that it should be mentioned in view of the recent decision of the Supreme Court of Ohio.)

Several other considerations should be mentioned. The corporate concept of limited liability is repugnant to the Canons of Professional Ethics. No practice of law limiting a client's right of recovery against his lawyer should be sanctioned. Also, the Canons prohibit laymen from participating in legal fees. There is a possibility that the tax advantages sought by the proponents of the corporate forms of legal practice such as profit-sharing plans, cannot be obtained if laymen are excluded. Leading scholars in the tax field have voiced doubts that any of the hoped for tax advantages can be obtained by the enactment of a professional corporation act. In any event, potential tax benefits should not be permitted to blunt the strength and purpose of the legal profession, which ultimately derives from the responsibility of the practicing lawyer.

THEREFORE, The committee expresses grave doubts concerning the ethics of permitting the practice of law to be altered from its traditional manner, and recommends to the House of Delegates that the professional corporation act, now proposed, for lawyers, be disapproved.