NEW HAMPSHIRE BAR ASSOCIATION

Sale of A Law Practice (and Associated Debt Collection)

Ethics Committee Advisory Opinion #1983-4/12
June 12, 1984

Reviewed by Board of Governors July 19, 1984

BACKGROUND:

"Attorney A, on his appointment to the Bench in New Hampshire as a full time judge, sold his law practice to Attorney B. In connection therewith, letters were written out to existing clients indicating that Attorney B would be handling their matters from that point forward unless they preferred to hire different counsel, and they were encouraged to ask questions if there is any confusion about the matter. Attorney B assumed responsibility for the practice insofar as clients contacted him, and has been carrying it on since. However, Attorney B has not been able, or willing, to continue [to pay] the balance of the monies paid by him for the practice

QUESTION:

Assuming that the sale of law practice was in conformity with the prior opinions of this Committee, what ethical restrictions exist related to Attorney A's plans to collect money owed to him through the sale of the law practice?

RESPONSE:

In 1981, this Committee rendered two lengthy opinions as to the propriety of the sale or dissolution of a law practice in New Hampshire. (These opinions are dated July 29, 1981 and December 8, 1981.) The two opinions make clear that there are a number of Ethical Considerations and Disciplinary Rules that severely limit the ability of an attorney to sell his/her practice as "a going business" or to sell the "good will" of his practice. For the purpose of this opinion, the Committee has assumed that the sale of the law practice complied with prior opinionsof this Committee and with the New Hampshire Code of Professional Responsibility.

An attorney who sells or dissolves his practice is entitled to a fee in proportion to the services he/she has actually rendered. See D.R. 2-107 (A) (2) and (3). An attorney is also permitted to sell the tangible assets of his practice such as books, file cabinets, typewriters, and other office equipment. See Advisory Opinion of July 29, 1981, at 8 N.H.L.W. 40. Assuming that the sums owed to Attorney A by Attorney B are for fees for services rendered or for tangible assets, it must then be determined whether there are any other provisions of the Code of Professional Responsibility that would prohibit a judge from making lawful attempts to collect these sums, through litigation if necessary.

There is nothing in the Code that prohibits an attorney who is also a Judge from undertaking formal legal proceedings to enforce his rights. However, Attorney A must take care to avoid any communication on the merits of his case with the judicial colleague who hears his case. See D.R. 7-110. Likewise, D.R. 8-101(A) (3) prohibits him from any effort to "Use his public position to influence or attempt to influence, a tribunal to act in favor of himself or of a clients." The Code also contains an important admonition to avoid not only actual impropriety but also the appearance of impropriety. See Canon 9 and Ethical Considerations 9-1, 9-2 and 9-6. Thus, Attorney A must make certain that his prelitigation activities and any Court proceedings are handled in a manner that avoids any hint of improper influence on his part.

Conclusion

Provided that Attorney A's claim is for unpaid fees to which he is entitled for services he rendered or for the sale of tangible assets, he is not barred by the Code of Professional Responsibility from undertaking litigation against Attorney B. He should take care to assure that the litigation and any other related collection activities are conducted in a manner that does not cast doubt on his integrity and fairness or that of the judicial system or in any other way create the appearance of impropriety.

This Committee's jurisdiction does not extend to rendering opinions as to the applicability of the Code of Judicial Conduct, and therefore this Committee cannot advise Attorney A of his obligations under that Code.