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QUESTIONS AND ANSWERS OF COMMITTEE ON PROFESSIONAL ETHICS OF NEW YORK COUNTY LAWYERS ASSOCIATION¹

QUESTION NO. 185

ACCEPTING BOND TO GUARANTEE FIDELITY OF LAWYER—WHEN UNDESIRABLE.—If it is contrary to the essential dignity of the profession for a lawyer to give, or permit another to give, a bond for him, conditioned on his fidelity, can a lawyer who accepts such a bond on another, knowing that the so-called bonded lawyer is acting contrary to the essential dignity of his profession, be held guiltless of a breach of ethics?

ANSWER NO. 185

This committee has heretofore in answer to specific questions expressed the opinion that it detracts from the dignity of the profession for a lawyer to enter into an arrangement either with a *collection agency* or a *law list* for the guaranty by them of his faithfulness in remitting commercial collections committed to his charge. The use of such baits by lay agencies as a means of securing business for themselves is to be condemned, and therefore, as this Committee has previously held, such guaranties of honesty by lawyers tendered to the public to be used in the solicitation of business are to be condemned. Since, in the opinion of the Committee, it is contrary to the essential dignity of the profession for a lawyer to give or to permit another to give a bond conditioned on his fidelity under the circumstances above stated, it is, in its opinion, also undesirable for a lawyer to accept such a bond under the same circumstances.

In giving the foregoing answer, the Committee has confined

¹In answering questions this Committee acts by virtue of the following provisions of the by-laws of the Association, Article XVI, Section III:

"This Committee shall be empowered when consulted to advise inquirers respecting questions of proper professional conduct, reporting its action to the Board of Directors from time to time."

It is understood that this Committee acts on specific questions submitted *ex parte*, and in its answers bases its opinion on such facts only as are set forth in the question.

itself to the class of cases which it has heretofore considered and in which a collection agency or a law list derives an advantage from the guaranty of the faithfulness of a lawyer in remitting commercial collections committed to his charge through their agency. The question however is predicated upon a hypothesis which is broader than any previous statement of the Committee's opinion. If the hypothesis of the question is to be deemed limited to the cases in respect to which the Committee's previous opinions have by their terms been strictly confined, the foregoing answer is, in the opinion of the Committee, an adequate reply to the question; but if the question undertakes to assume, as it apparently does, that there is no situation in which an attorney can properly submit to the guaranteeing of his fidelity, then the Committee does not admit the truth of the hypothesis and consequently could not follow it to its logical conclusion.

There are many relations in life in which the guaranty of fidelity is an essential feature of the relationship—such as the bonding of executors, administrators, receivers, assignees for the benefit of creditors, employees or appointees of the Federal Government, officers of private corporations, etc. In these cases the fact that the incumbent is a lawyer is not recognized as a reason why he should be exempted from complying with the rules which have been adopted out of precaution for indemnifying against infidelity. The Committee is not of the opinion that in such cases lawyers should be regarded as an exempt or privileged class.

QUESTION NO. 186

EMPLOYMENT OF DISBARRED ATTORNEY BY ANOTHER ATTORNEY—DISAPPROVED.—A. Can an attorney who has been disbarred by the courts from practicing law assist another attorney, not disbarred, in preparing papers, either complaints, answers or other legal documents, for or without remuneration? B. Is the attorney who employs the disbarred attorney guilty of unprofessional conduct?

ANSWER NO. 186

In the opinion of the Committee:

(a) The *right* of the disbarred attorney to perform the services described in the question depends upon the construction of laws which probably vary in different jurisdictions (*e. g.* in New