
**E-80-9 Attorney as employee-shareholder of
eviction corporation**

Facts

An attorney and non-attorney propose to form a corporation which will take charge of a landlord's entire eviction process pursuant to a written agency agreement for specified fee. The corporation will see to it that notices are served and will hire an attorney to perform all legal services for which he separately bills the corporation. The attorney and the non-attorney would share in the corporation profits, if any.

Question

May an attorney ethically participate in such activities?

Opinion

We believe that the answer to whether an attorney may ethically participate in such activities requires consideration of the following questions:

- 1) Is a corporation which conducts the entire eviction process engaged in the practice of law?
- 2) Is the attorney assisting the corporation to engage in the practice of law?
- 3) Is the attorney who is co-owner of the corporation engaged in the division of fees with a non-lawyer?

Whether or not the corporation is engaged in the practice of law is a legal issue, and does not come within the purview of the committee's authority. However, it would seem that when a corporation enters into a contract to handle a third party's entire eviction process, including court proceedings, serious consideration must be given to an inquiry as to whether or not it is practicing law, but without deciding that issue, it appears to the committee that the attorney involved is "skating on thin ice" when one considers the Code of Professional Responsibility. SCR 20.17 states "A lawyer should assist in preventing the unauthorized practice of law"; SCR 20.18(1) states "A lawyer may not aid a

non-lawyer in the unauthorized practice of law”; SCR 20.20 states “A lawyer may not form a partnership with a non-lawyer if any of the activities of the partnership consists of the practice of law.”

The committee further calls your attention to Opinion E-61-1:

It seems amply clear to the committee that an attorney may not accept employment from a lay collection agency to litigate claims of the agency’s customer where such employment (a) involved payment of the attorney’s fees by the agency, or (b) involves division of the fees with the lay agency, or (c) subjects the attorney to the control of the agency, or (d) involves acceptance of professional retention arising out of solicitation by the lay agency, or (e) permits the agency to use the attorney’s name or process or (f) serves as an aid to the unauthorized practice of law by the lay agency.

The remainder of the opinion is likewise recommended for serious consideration.

A serious further problem with the proposed arrangement is that when the attorney commences an action in court, who is his client: the landlord who has contracted with the corporation or the corporation?

SCR 20.23 requires that “A lawyer should exercise independent professional judgment on behalf of a client.” In order to comply with SCR 20.23 and the ethical considerations thereof, a lawyer must necessarily know who he is representing and who has the primary claim on his judgment. In the event that the financial interests of the corporation should be in conflict with the legal representation to which the landlord is entitled, what will be the position of the attorney and where do his personal interests lie?

The committee further calls your attention to SCR 20.26 “avoiding acquisition of interest in litigation.” A lawyer who is a member of a corporation which contracted with a landlord for complete legal services may well be considered to have a propriety interest in litigation commenced pursuant to that contract.

Finally, each lawyer must keep in mind the admonition of SCR 20.48 “A lawyer should avoid even the appearance of professional impropriety.”

For the reasons stated, the committee is of the opinion that a lawyer may not ethically enter into the foregoing arrangement, and the answer to the above question framed is “no.”