
1/63 An attorney retiring from practice may not sell or otherwise dispose of his practice and goodwill to another attorney: This does not prevent the sale of office facilities or furniture

Question

You advise that a lawyer wants to retire and sell his furniture, equipment, files and records to a younger lawyer. He tells some of his clients that he proposes to retire and has “sold his business” to the younger lawyer. One of the clients demands all of his files from the retiring lawyer who refuses to deliver them and says that he has sold the files and records to the younger lawyer. Your inquiry is as to the propriety of this and whether or not the client is entitled to his files.

Answer

The situation is covered quite clearly in Opinion 266 of the Professional Ethics Committee of the American Bar Association, and the conclusions appear to be wholly correct and clear and the only possible conclusions under the Canons of Ethics.

It is clear that a lawyer cannot sell any goodwill of his business. He is entitled to be paid by his clients for the fair value of whatever services he may have performed for them up to his retirement or death. He also owns his library, furniture, fixtures, file cases and any renewal privilege he may have on the lease of his office. These another lawyer may properly purchase from a retiring lawyer or from the estate of a deceased lawyer.

The decision goes on the say:

“The goodwill of the practice of a lawyer is not, however, of itself an asset, which either he or his estate can sell. As said by the Committee on Professional Ethics of the New York County Lawyers’ Association in its Opinion 109 (October 6, 1943):

‘Clients are not merchandise. Lawyers are not tradesmen. They have nothing to sell but personal service. An attempt, therefore, to barter in clients, would appear to be inconsistent with the best concepts of our professional status.’

“Two other Canons further bear on the suggested arrangement. Canon 37 provides:

‘It is the duty of a lawyer to preserve his clients’ confidences. The duty outlasts the lawyer’s employment. . . .’

“Every lawyer’s files contain confidential information from clients which neither he nor his heirs or personal representatives may properly disclose without the client’s express permission.”

A retiring lawyer may properly arrange with another competent lawyer or firm to do what is necessary to protect the immediate interests of his clients in the event of an emergency retirement. In any such case, however, the client always has the option to substitute another attorney of his choice.

The same decision goes further in the case of a deceased lawyer, which the writer is sure also applies to a retiring lawyer, and states the following:

“It is entirely proper for the professional colleagues of a deceased lawyer, out of regard for him, and with the approval of the widow or personal representatives, to take such steps as are necessary to protect the immediate interests of his clients and to advise such clients that they are doing so, *making it clear to the clients that the papers of the latter will be turned over promptly to any other attorney whom the client may desire to designate.*” (Italics by the writer.)

One other absolute principle that would seem to govern the situation is contained in the Oath of Office which all attorneys took when they were admitted to practice, contained in Wisconsin Statutes 256.29:

“I will maintain the confidence and preserve inviolate the secrets of my client and will accept no compensation in connection with his business except from him or with his knowledge and approval.”

To conclude: first, no lawyer has any right to sell or in any manner dispose of the goodwill of his business. Second, a client has an absolute right to withdraw all of his records and papers, which would seem to the writer would include everything that the retiring lawyer has done for him and certainly everything of

a confidential nature. (Note: See DR 3-102(A) Code of Professional Responsibility.)