
1/71 Lawyer acting as trustee for bail fund

Your inquiry to this committee is as to the propriety of a procedure in which a lawyer or law office might receive funds from persons or organizations other than the lawyer's client to be kept in a special account separate from the lawyer's or professional trust account, to be available for prompt cash bail money for persons charged with crimes, and checks thereon to be handled by the designated lawyer or member of a firm or their employees under their direction, even in a case in which the persons to be bailed are not then clients of the lawyer or law firm and in which no money from the fund is used for persons who later become clients of the lawyer. It is the opinion of this committee that such a plan or practice would be improper and unethical.

In the first place, such a plan would violate the spirit, if not the letter, of the law under Wisconsin Statutes, sec. 757.34, which provides that no attorney shall be taken as bail or security on any undertaking, bond, or recognizance in any action or proceedings, civil or criminal. The proposal here would permit him to do somewhat indirectly what he is prohibited from doing directly, and it is to be noted that this section is a part of the general chapter on the conduct of attorneys.

Further, it is clear that under such a plan the attorney or firm would be at least indirectly in the "Bail Bond Business," and to serve its purpose it must be well known that attorney "X" or law office "X" has this service most readily available in his or its own office. This would involve "solicitation of business" in violation of DR 2-103 of the Code of Professional Responsibility, as well as the clear intent of DR 2-102(E) and EC 2-9.

It has long been recognized by many interpretative opinions of the ABA Ethics Committee as well as those of many states and other organized bars, that although a lawyer may properly be engaged in other businesses than the practice of the law, he may do so only if the other business can be conducted in a manner such that it is not a "feeder" for the practice of the law. Many businesses when operated notoriously or by advertising or other forms of solicitation, such as Income Tax Service, Claim Adjustors Investment Advisors, Marital Counselors, Lending Agencies, and others, are so inherently "feeders" for a legal practice, that it is unethical for a lawyer to be engaged in them.

The committee's conclusion above is based upon the thinking and reasons herein indicated, that is, that the proposal would be improper and unethical.