

Nebraska Ethics Advisory Opinion for Lawyers
No. 79-7

WHERE A NEBRASKA ATTORNEY, AT THE REQUEST OF AND ON BEHALF OF HIS CLIENT, CONTACTS ANOTHER ATTORNEY RELATIVE TO THE REGISTRATION OF A FOREIGN JUDGMENT, THE NEBRASKA ATTORNEY HAS NO PERSONAL RESPONSIBILITY FOR PAYMENT OF THE OTHER ATTORNEY'S FEES ABSENT AN AGREEMENT TO ASSUME SUCH RESPONSIBILITY.

IT WOULD NOT BE ETHICALLY PROPER FOR THE NEBRASKA ATTORNEY TO SUE HIS CLIENT ON BEHALF OF THE OTHER ATTORNEY TO COLLECT THE LATTER'S UNPAID LEGAL FEE.

FACTS

The Advisory Committee has been asked to give its opinion relative to the following two questions:

1. When an attorney in Nebraska, at the request of and on behalf of his client, contacts another attorney relative to the registration of a foreign judgment, what responsibility does he incur as far as payment of the other attorney's fees?

2. If the attorney so contacted has not been paid and subsequently requests the Nebraska attorney to bring suit against the client for the collection of his fees, is that a breach of the Code of Professional Responsibility to pursue that collection on behalf of the other attorney?

DISCUSSION

With reference to the first question, Formal Opinion 63 of the American Bar Association Committee on Professional Ethics states as follows:

"The question of whether an attorney is financially liable for legal services rendered to his client by another attorney is a

question of agency law rather than one of ethics: However, candor and fairness requires that if an attorney has any doubts concerning his client's ability to pay for legal services, he should so inform the attorney to whom he refers the case."

Wise on Legal Ethics states at page 124:

"A lawyer who forwards a case is under no obligation to pay the fee if the client does not. The forwarder should use every reasonable effort to obtain payment for the forwarder, however."

With reference to the second question, DR 5-101(b) under Canon 5 of the Code of Professional Responsibility provides:

"A lawyer shall not accept employment in contemplated or pending litigation if he knows or it is obvious that he or a lawyer in his firm ought to be called as a witness..."

CONCLUSIONS

The Advisory Committee concludes, in answer to the first question, that where an attorney in Nebraska, at the request of and on behalf of his client contacts another attorney relative to the registration of a foreign judgment, that the attorney in Nebraska has no personal responsibility for payment of the other attorney fees in the absence of an agreement to assume such responsibility. He should, however, inform the other attorney if he has any doubts concerning his client's ability to pay for the services of the other attorney.

The opinion of The Advisory Committee in response to the second question posed is that obviously in the event of suit against the client for the collection of the other attorney's fee, the Nebraska attorney might be called upon to be a witness. This provision, together with Canon 9 which provides that a lawyer should avoid even an appearance of professional impropriety, dictate a

conclusion that the Nebraska attorney should not bring suit against the client for the collection of the other attorney's fee.

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