

KENTUCKY BAR ASSOCIATION

Ethics Opinion KBA E-12

Issued: May 1963

Question: May an attorney purchase an income tax refund from a client for whom he prepared the tax return at ninety percent of face value where funds for this are advanced by another client who receives sixty percent of the profit with the attorney retaining forty percent as his fee?

Answer: No.

References: Canon 10, 11, 28, 34, 35

OPINION

A lawyer prepared income tax returns for many of his clients. When a client is entitled to a refund, he follows the practice of purchasing the refund from the client at ninety percent of face value, with the understanding that the refund check will be endorsed over to him when issued. The funds required for this are advanced by another client, who receives sixty percent of the profit, while the lawyer retains the remaining forty percent as his fee. We have been asked to determine whether or not this is an ethical practice on the part of the lawyer.

The American Bar Association held many years ago that it was improper for an attorney to buy judgments, notes and other choses in action for less than their face value, as that was in violation of Canon 28, which forbids lawyers to stir up strife and litigation. That opinion went on to say that even if the conduct was not in violation of Canon 28, it still constituted conduct beneath the dignity of the profession. It has been said that such conduct is in violation of Canon 10, which forbids a lawyer from purchasing any interest in the subject matter of the litigation which he is conducting. It might be said that this conduct would be in violation of the spirit of Canon 11, which requires a lawyer to refrain from any action whereby, for his personal gain, he takes advantage of the confidence reposed in him by his client. Too, this conduct could be interpreted as violating Canons 34 and 35.

All in all, we think that it is improper for an attorney to engage in such practices. We therefore hold such conduct to be unethical.

Note to Reader

This ethics opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530 (or its predecessor rule). Note that the Rule provides: "Both informal and formal opinions shall be advisory only; however, no attorney shall be disciplined for any professional act on his part performed in compliance with an opinion furnished to him on his petition, provided his petition clearly, fairly, accurately and completely states his contemplated professional act."