

COLLECTION AGENCY ACTIVITIES: THE PROBLEM FROM THE STANDPOINT OF THE BAR

EDWIN M. OTTERBOURG*

The genesis of the movement against unauthorized practice of the law by the organized bar in the United States was the report of a special committee of the New York County Lawyers Association, of which Julius Henry Cohen, Esq., was chairman, which resulted in the appointment of the first standing committee on unlawful practice of the law in the United States by that Association in 1914. In the reports and in the discussions leading up to the organization of that committee, among the activities of laymen in the field of law practice which were deemed a menace to the public and to the bar alike, and which were the subject of great discussion, were those of the collection agencies.

At about the same time, the Committee on Ethics of the New York County Lawyers Association, of which Charles A. Boston, Esq., was chairman, in its answer to Question 47, condemned many activities then current affecting the relations of lawyers to collection agencies.

There are now functioning in the United States approximately four hundred twenty-nine committees on unauthorized practice of the law in addition to the national committee of the American Bar Association. Throughout the years, since the subject of unauthorized practice of law was first actively discussed, there is hardly any report on the general subject that has been made which did not refer to the activities of collection agencies and there has been a country-wide battle over legislation to regulate, and litigation to prevent and punish, unauthorized practice of law by collection agencies.

By penal law and decisions, by canons of ethics, and by the crystallization of public opinion, certain principles, the upholding and enforcement of which vitally affect the public interest, have become generally accepted. These principles might be summarized as condemning the champertous stirring up of law suits and legal proceedings for profit, the purchase and sale of legal claims against others for the purpose of suit thereon, the advertising and solicitation of legal business by laymen for lawyers or by lawyers through laymen, either in tort or contract cases, and any

* LL.B., 1906, New York Law School. Member of the New York Bar. Member of the firm of *Otterbourg, Steindler & Houston*, New York City. Member of the committees on unauthorized practice of the law of the American Bar Association and the New York County Lawyers Association (chairman). Chairman of the Special Committee of the New York State Bar Association on Collection Agencies.

form of association, partnership or relationship between laymen and lawyers involving the division of fees and tending to increase litigation and encouraging the practice of law by laymen.

The necessity for the upholding of these principles in the interests of the public, the administration of justice and of the bar, are so self-evident that one sometimes wonders why the public and bar alike have been blind so long to their violation in the collection agency field and have been, until recently, so ineffective in dealing with the problems arising from such infractions.

A collection agency has been defined in Black's Law Dictionary as a concern which collects all kinds of claims for others and a collector is defined as "a person appointed by a private person to collect the credits due him."

With in the terms of this definition, the collection agency can, and in many instances does, perform a useful function. In fact, whenever the activities of collection agencies generally are attacked in court or in a legislature, it is claimed by the representatives of the collection agency business that they do function only within the general terms of this definition.

The same dictionary defines a lawyer as a person licensed to practice law who, for fee or reward, prosecutes or defends cases in the courts, or whose business it is "to give legal advice in relation to any case or matter whatever."

Unfortunately, in actual practice, the activities of neither collection agencies nor lawyers were kept within these definitions. Lawyers affiliated with collection agencies thought that by becoming "collectors" they might divest themselves of the necessity of compliance with the ethics and standards of conduct required of a lawyer. Meanwhile, collection agencies assumed to give legal advice and to conduct their business along lines which in fact amounted to practicing law, resulting in numerous abuses.

In considering the general problem as long ago as 1913, Charles A. Boston, Esq., said, with reference to the collection business:

"It is not inherently legal business; there is no substantial reason why others may not legitimately engage in it; but if a lawyer is selected to attend to it, it is because of his professional standing and in prosecuting it, it is part of his professional duty to conduct himself in it with the same degree of integrity and in the observance of the same ethical principles which would characterize the performance of his strictly professional duties."¹

And so, as a practical matter, the basic cause of the problem arises from the fact that when a business man gives a claim for collection to a lawyer, he has all of the protection that the professional relationship implies in connection with that matter, but by the same token, the lawyer is restricted by the canons of ethics and the standards of the profession from certain activities in connection therewith which might result in the collection of the claim. For example, the lawyer cannot adopt outrageous dunning methods amounting to blackmail; he may not make threats to destroy the credit of the debtor, or to communicate with debtor's other creditors or the trade generally that the debtor is unreliable, nor may he go out and solicit and

¹ American Legal News, August, 1913.

corral other claims against the debtor as a weapon to enforce the collection, or to precipitate a bankruptcy.

But, if the same claim is given to a collection agent, while the creditor has none of the protections of the professional relation, the very lack of restriction, ethical standards or inhibitions of any kind permits the collection agency to engage in methods which oftentimes bring about results. From the creditor's point of view, the debtor owes him money and any means used to collect the debt are justifiable.

In addition, collection agencies are free to advertise, solicit and tout for business. All of the methods of business solicitation forbidden to lawyers are employed. It is therefore readily understandable, why in the last thirty or forty years the commercial law practice has so largely come under the control and into the hands of lay collection agencies.

Self-evidently, when ordinary dunning methods fail, the claim transforms itself into a potential lawsuit. If anything further is to be done, a lawyer must appear upon the scene. By virtue of his office, he sometimes can collect the claim by demand on threat of suit, or by instituting suit in the court, or his services are required in a bankruptcy proceeding, which often ensues.

Now of course, no collection agency will say openly that it is entitled to practice law or to go into court, but it is face to face with the alternative of admitting its ineffectiveness to its customer, or proceeding to "furnish" the legal service which the customer would have received in the first instance, had he employed a lawyer. Thus, as a practical matter, the collection agency, so far as creditor and debtor are concerned, is practicing law, except that it does not appear in court, although there are instances of this as well, where careless courts tolerate such appearances.

Collection agencies have maintained that the "furnishing of a lawyer" does not constitute the practice of law, and they have argued that the very fact that they "furnish" a lawyer as *part* of their services is a denial of any representation on their part of practicing law. The business community has very generally accepted this argument of the collection agencies.

Through the years, creditors generally who dealt with collection agencies understood as a "business practice" that when they gave a collection item to the agency, it was appropriate and essential that the matter be attended to by that agency, through its lawyers right through including suit, trial, judgment and bankruptcy proceedings.

But making a business of furnishing the services of professional men, whether they be lawyers, doctors, dentists, optometrists, or others, is in fact the practice of that profession.² Therefore, laymen and corporations are specifically prohibited from furnishing lawyers and legal advice in penal statutes in New York and other states, and such "furnishing" is included in prohibited acts which constitute illegal practice

²Furnishing lawyers, *In re Cooperative Law Co.*, 198 N. Y. 479, 92 N. E. 15 (1910); doctors, *People v. Dermatological Institute*, 192 N. Y. 454, 85 N. E. 697 (1908); dentists, *In re Harlem Dental Co.*, 189 App. Div. 359, 178 N. Y. Supp. 533 (1919); optometrists, *McMurdo v. Getter*, Mass. Sup. Jud. Ct. (Sept. 20, 1937) 4 U. S. L. WEEK 142.

of law.³ If the lawyer is the agent, servant or employee of the collection agencies or beholden to them in any way, the direct relationship of attorney and client is bound to be destroyed. Where the collection agency, by reason of being the intermediary or entrepreneur, is in control of the selection, compensation and action of the lawyer, in most jurisdictions, by statute or decision, it is held that the collection agency is in fact practicing law.⁴

Unfortunately most lawyers are satisfied with a sound theory, particularly when it affects the profession, and feel that the foregoing general statement of principles involved and their self-evident rightness ought to settle the problem. But in a realistic world unfortunately this is not so. Business men generally speaking demand what they call "service," and have been led to, and do, believe that collection agencies are cheaper and more efficiently organized to perform functions which a lawyer cannot or will not perform; and as a practical matter, they have made their own distinction between what they call "collection items" and "legal matters." As to the former, they do not see why they should deal with lawyers at all, and are indifferent to what collection agencies do when lawyers whom they supply are called in.

Unless and until this point of view of the business community changes, the reality of the situation is that the commercial law practice will continue, as it has in the past, largely under the control of collection agencies.

The volume of collection business in the United States from the great forwarding centers such as New York, Chicago, Philadelphia, Detroit and St. Louis, where large businesses engaged in interstate commerce have their main offices, runs into astoundingly large figures. The average lawyer in general practice is wholly unaware of what is involved; he is apt to think that the subject being discussed is a trivial one involving dunning methods in the collection of small claims, such as possibly local accounts due a department store or other retail concerns. But in truth, the problem under discussion affects the entire credit structure of the wholesale commerce of the United States, in one form or another. The customers of manufacturers and wholesalers are necessarily located all over the country, and when a debtor does not pay a collection agency upon a demand or through ordinary dunning methods, the claim has to be forwarded for action to wherever the debtor may be, and there a local lawyer must be employed.

This necessity brought about, concurrently with the growth of the collection agency business, the so-called "law list" business, the conduct of which is part of the problem.

These law lists contain the names of local lawyers in every city, town and hamlet of the United States, and, naturally, their revenue depends upon charging as much as they can get from these lawyers for their listing. The large volume of professional

³ N. Y. PEN. LAW, §§270, 280.

⁴ See particularly the reasoning and citations in State *ex rel.* McKittrick v. C. S. Dudley & Co., 102 S. W. (2d) 895 (Mo. 1937), *Cert. denied*, 58 Sup. Ct. 12 (1937). The cases involving collection agencies are listed in BRAND, UNAUTHORIZED PRACTICE DECISIONS (1937) beginning at page 767.

employment that is involved can best be realized when one considers that, during the past year, it has been estimated that lawyers whose names have appeared in these law lists have paid for such listing approximately \$15,000,000.⁵

Completely accurate figures of all of the commercial law business that is forwarded over the lists cannot be obtained, but, as long ago as 1927, an investigation by the chairman of the Committee on Supplementary Canons of Ethics of the American Bar Association disclosed that during the preceding year one law list alone had handled \$100,000,000. of forwarded claims, and that another had handled \$40,000,000. and still another \$10,000,000. There are approximately two hundred of these lists now being published in the United States.

These law lists, in one form or another, have adopted a system by which the cost to the lawyer of the publication of his name is based upon the volume of professional business he receives. The more business the lawyers receive, the higher the price for the listing. Various methods of computing the listing charge are adopted, but the objective is the same.

Hence, it became a matter of important business to the law list publishers to see to it that their lists were used. The more widely a law list was used the more profitable its business. One of the chief sources for the forwarding of commercial business was the collection agencies. Direct relationships between law lists and collection agencies in mutual aid of the solicitation, control and forwarding of commercial business were established.

Lawyers were charged for listing according to the population or size of their town and accurate track was kept of the amount of professional employment of each lawyer because the forwarder notified the list of each item of business sent, and the list, in return for this, guaranteed the fidelity of the lawyer.

Summing it all up, we have the situation where, because of the attitude of the business community above referred to, this extraordinarily large volume of professional business was directed, controlled and handled by laymen for profit, with the aid of lawyers, and this included not only simple collections, but also bankruptcies, insolvencies, lawsuits, trials and the entire field of commercial law.

In the development of the control of commercial business by collection agencies, competition among themselves has forced them to offer their services purely on a contingent basis, so that they are not paid by their customers if they do not obtain results. Necessarily, lawyers employed by them are required to undertake their professional services on the same general basis; certainly, their initial employment is thus secured, subject to special arrangements in matters of litigation. The contingent fee, however much the bar generally may condemn it, is in the collection field to stay.

In order that the business community could receive "service" from the collection agencies on a cheap enough basis to justify it, the compensation of lawyers engaged

⁵ See *Suggestions in Opposition to 1937 Report of Special Committee on Law Lists*, filed with American Bar Association Convention by representatives of the State Bar of Oklahoma and the Missouri Bar Association, at page 4.

in this field was performance based, not on the value of their professional services, and the work they did, but on the size and amount of the claim provided it was collected. Any lawyer who undertook to enter into this field on this contingent basis could hardly afford to do so unless a large volume of similar business were received by him through the same channels, and it followed naturally that this could only be done if commercial business of this character were concentrated in the hands of a few lawyers in each community. In this way, handling totally unremunerative matters on a contingent basis might be compensated by some remunerative cases if a sufficient volume of matters were obtained.

In the natural development of this business, solicited and given in the first instance to the collection agency, the direct relationship between lawyers involved and their real clients (the creditors) was obliterated. Lawyers could only justify receipt of further business from the forwarding collection agency by pleasing it—and more and more came to regard the forwarding agency as their employer.

By reason of the cheapness of the service required and the control over the lawyer's services by the lay intermediary, most members of the bar in the various localities preferred not to be listed or employed, and thus the practice of commercial law became a specialized activity of lawyers who, for one reason or another, were willing or compelled to accommodate themselves to the practical exigencies of the situation. In passing, it is to be noted that the younger lawyers of the United States could hardly afford the cost of listing their names in the law lists or to engage in this business on the contingent scale of fees required. Over the years, most of the fine younger members of the bar have been unable to apply their initial professional activities to a field of law practice which had been available to the generation before. In addition, strict compliance with the canons of ethics and standards of professional conduct imposed by the organized bar prohibited them from seeking to compete with the collection agencies in the field.

The state of commercial law practice had fallen so low indeed that it was generally taken for granted by the business community that lawyers, to whom collection items were to be sent, should be bonded as a matter of course, and practically every law list advertised that it furnished a bonding or fidelity guarantee insuring the honesty of receiving lawyers. This was directly contrary to the action of the organized bar as expressed in its canons of ethics, that the high office of the lawyer, the oath that he has taken, his required character and attainments, and the essential dignity of the profession, all made unseemly a lawyer consenting to be bonded for his own honesty. Yet, in the commercial law field, unless the lawyer agreed to do so, he would not be listed.

Many collection agencies maintained and conducted a credit reporting system. It is hard to say which activity first emerged. The business community thus received a valuable service which lawyers could not undertake, to wit, a credit report in advance as to the financial standing of a prospective customer, or a report as to the condition of an existing customer. In the latter instance, if the report indicated lack

of safety, the claim, if past due, was naturally forwarded for collection to the agency furnishing such report.

As a business-getting inducement in aid of the soliciting of collection business, many agencies offered what was called a "free demand" service so that any customer, using their credit reports, would be entitled, free of charge, to the use of some preliminary dunning letters or demands in the name of the agency. The fact that so much of this free demand service was given indicates rather eloquently that the more lucrative part of the collection agency business, in many instances, was not derived from the mere "dunning" of delinquent accounts. Of course, lawyers could not, with propriety, compete along these lines, even if it were economically possible.

The demands that were sent out were form letters and their effectiveness depended necessarily very much on the language used, which, in the case of the reputable collection agencies, was couched in appropriate language. But, of course, in the keen competition for business, unprincipled and generally "fly-by-night" collection agencies used forms in which were contained threats, extortionate demands and papers simulating legal documents or court process for the purpose of intimidating the debtors.

It is but fair to say that the extraordinary language and methods used in connection with dunning, which became a public scandal and have been prohibited in most states by law, were not originally conceived by the more reputable collection agencies. But, as the entire collection of accounts by dunning methods was considered outside of the field of law practice, the methods employed were wholly without restriction and control until the legislatures stepped in.

It was inevitable and natural that the diversion of the commercial law practice of the United States in the manner described would create a situation menacing to the public interest, interfering with the proper administration of justice, and utterly destructive of the canons of ethics and standards of professional conduct. The business of collecting accounts is highly competitive. Competition among collection agencies and law lists became increasingly keen and in many instances unscrupulous. Utilizing high pressure business methods to secure claims and to collect them in competition with one another seemed to require that the viewpoint of the legal profession be ignored. And why not, when the securing of a claim for collection did not necessarily mean that a lawyer would be required; at least, that is what creditors were told and believed, and if this were so, of course, it was cheaper. Thus, the inception of business depended upon the belief that lay collection agencies could collect accounts more efficiently than lawyers and more cheaply. The employment of a lawyer in such matters became not only something to be avoided, but collection agencies, in the solicitation of business, oftentimes represented that "their lawyers" if employed, would not increase the cost to the client. And it became a matter of business necessity for lawyers who served collection agencies to adjust their charges for professional services accordingly.

And so the collection business by lay agencies grew lustily into an important

business, utterly free from any ethical restrictions such as existed for the protection of the public in the general field of law practice.

As competition between the laymen grew ever keener in this wholly unrestricted activity, gross abuses developed. From all parts of the United States came complaints of unjust intimidation of debtors by harassing suits, blackmailing methods, simulation of legal process, precipitation of unnecessary bankruptcies, control of insolvent estates in aid of secret preferences, and for the purpose of obtaining a share of legal fees to the utter disregard of creditors' interests, and appearances in courts by lawyers acting for intermediaries who did not know their own clients. The encouragement of "commercial ambulance-chasing" through collection agencies by unprincipled lawyers affiliated with them was one of the demoralizing by-products.

While the business community would have been quick to condemn laymen who made it a business to chase ambulances in order to obtain accident cases for lawyers, the same thing in the field of commercial law seemingly was tolerated as being quite in line with ordinary business methods. The disregard and pollution of legal ethics resulted inevitably in producing a scandalous state of affairs.

In the bankruptcy courts, investigations disclosed that the alliances between collection agencies and lawyers were largely responsible for conditions which brought about the heaviest losses to the creditors. To quote from the *Donovan Report*:

"Working arrangements were effected between attorneys and collection agencies, the agencies being remunerated for furnishing information concerning insolvent debtors. Fees were split with certain employees in the clerk's office for advance information of the filing of voluntary petitions. Petitions were filed by the attorneys as 'attorneys in fact' for creditors who had not authorized, and had no knowledge of, the use of their names. Creditors were bribed into permitting the use of their names on petitions by arranging for them to obtain merchandise in the bankruptcy proceedings on fictitious claims. The attorney for the petitioning creditors would pay a percentage of his fees as attorney for the receiver and trust to the bankrupt's attorney or the collection agency that had been instrumental in obtaining the case for him. . . . In general, creditors have taken but little interest in the administration of bankruptcy estates. Elections of trustees have been controlled by proxies solicited by attorneys, collection agencies and trade associations who, in most cases, have had no interest in the proceedings other than to control the election."⁶

A system such as this involves far greater evils and abuses than mere "unlawful practice of law." Lack of restriction, supervision and immunity from discipline of laymen unlawfully practicing law leads always to offenses of a far graver nature. Methods of enrichment which may be used in the pursuit of a business cannot be adopted for a profession when such methods flout its ethics and proprieties. When they are adopted, demoralization follows.

In a recent report to the Appellate Division of the New York Supreme Court, First Judicial Department, in connection with ambulance chasing, the statement is

⁶In the Matter of an Inquiry into the Administration of Bankrupts' Estates, (U. S. Dist. Ct., S. D. N. Y. 1930), Report by William J. Donovan, Esq., pp. 4 and 5. See also *Report of New York Board of Trade Committee on Bankruptcy*, dated January 31, 1934.

made that the "ever-present handmaidens of ambulance chasing" are the graver crimes of perjury, subornation of perjury and larceny.⁷ There can be no distinction in principle between ambulance-chasing in accident cases and activities of the same kind in the field of commercial law.⁸

As the movement against "unlawful practice of the law" crystallized and became national in scope, the organized bar, most of the leaders of which knew little, if anything, of these conditions in the commercial field, found themselves facing therein a *fait accompli*. Commercial law practice was controlled and in the hands of lay agencies, law lists and a rather helpless commercial bar. Not only this, but the scandals in the administration of justice in the commercial law field were ascribed by the public to the bar, and the responsibility therefor seemed to rest upon the bar. Practices had developed which cast a stigma upon the entire profession. Many of the lawyers involved were entirely dependent upon the collection agencies and law lists, as intermediaries, to send them professional employment. But, the good name of the entire bar was at stake.

Something had to be done. The organized bar swung into action. Statutes were passed in many states restricting the activities of collection agencies in one form or another, proceedings by injunction and contempt were successfully conducted by the bar associations, disbarment proceedings against lawyers were brought. In some states, the rather ineffective remedy of licensing and specifically regulating collection agencies has been tried. In some of the United States District Courts, local rules have been enacted, seeking to control the voting of solicited claims in bankruptcy.⁹

In some states, a definite drive is on to "drive the collection agencies out of business." At nearly every bar association meeting, the younger lawyers vigorously espouse a campaign with this objective. But neither from a public nor a professional point of view can the problem be solved so cavalierly. A system that has grown up over a period of half a century can neither be legislated nor litigated out of existence. Particularly is this true where, as here, the business community sincerely desires some of the legitimate service which reputable collection agencies can give.

In New York and elsewhere, whenever the bar has sought legislation to "drive the collection agencies out of business," the agencies have been supported by thousands of business men who, without question, honestly believed such legislation inimical to their interests.

The movement by the bar associations to stop unauthorized practice of law in the collection agency field has been generally misunderstood and misrepresented, as being an attempt by the lawyers to get back some legal business for themselves. Neither the business community nor the collection agencies realize that this self-evidently is not so. Lawyers are essentially a part of any system collecting accounts

⁷ *Accident Fraud Investigation*, Report by Bernard Botein, Assistant District Attorney, New York County (1937) p. 3.

⁸ See Canons 28 and 35, AM. BAR ASS'N, CANONS OF PROFESSIONAL ETHICS (1937).

⁹ Rule 8-A, S. D. N. Y.; rule 39, E. D. N. Y.

when dunning methods fail, and collection agencies were utilizing the services of lawyers to a large degree. What made the organized bar aghast was the way in which the business was being conducted and the relations of lawyers and laymen therein. If lawyers were to be permitted in the commercial law field utterly to disregard and violate the legal ethics and standards of professional conduct which applied to every other branch of the profession, then the struggle of the organized bar to uphold these standards was bound to be a losing one. Teaching ethics to young lawyers as part of their preparatory course became a useless gesture, if these rules applied to some branches of law and not to others.

Historically, the movement against unlawful practice emerged from a desire to enforce the ethics of the profession. The very first Committee on Unlawful Practice of the New York County Lawyers Association was an off-shoot of the Committee on Ethics of that Association; in the American Bar Association, the parent of its present Committee on Unauthorized Practice is its Committee on Professional Ethics and Grievances.

The desire of lawyers to uphold the ethics of their profession is based not upon self-aggrandizement, but rests upon the conviction that the continued usefulness of the profession as an instrument of public service must depend upon the maintenance and upholding of a correct professional attitude toward the public, toward their clients, and toward the courts. Lawyers generally regard this as self-evident. But the business men do not grasp this situation. The question, from their point of view, is a very simple one: if all the lawyers were honest and lived up to the standards of the profession, there would be no abuses—the legal profession “should clean house.” If they want to give a claim to a collection agency, they do so because they do not think they need a lawyer at all. So why interfere with collection agencies? And anyway, what right has the bar to insist upon the direct relationship of lawyer and client, if the client prefers it otherwise?

And yet, here in this field of commercial law, we face the extraordinary difficulty of reconciling a relationship between laymen and lawyers which has its inception in a simple situation, not necessarily involving a lawyer, yet generally resulting in law practice, and the furnishing of lawyers.

During the past two years, substantial progress has been made toward a solution of the problem. The American Bar Association's Committee on Unauthorized Practice of the Law, as well as the New York State Bar Association's Special Committee on Collection Agencies, adopted a declaration of principles as follows:

“It is improper for a collection agency:

1. To furnish legal advice or to perform legal services, or to represent that it is competent to do so; or to institute judicial proceedings on behalf of other persons.
2. To communicate with debtors in the name of an attorney or upon the stationery of an attorney; or to prepare any forms of instrument which only attorneys are authorized to prepare.
3. To solicit and receive assignments of claims for the purpose of suit thereon.

4. In dealing with debtors to employ instruments simulating forms of judicial process, or forms of notice pertaining to judicial proceedings, or to threaten the commencement of such proceedings.
5. To solicit claims for the purpose of having any legal action or court proceedings instituted thereon, or to solicit claims for any purpose at the instigation of any attorney.
6. To assume authority on behalf of creditors to employ or terminate the services of an attorney or to arrange the terms or compensation for such services.
7. To intervene between creditor and attorney in any manner which would control or exploit the services of the attorney or which would direct those services in the interest of the agency.
8. To demand or obtain in any manner a share of the proper compensation for services performed by an attorney in collecting a claim, irrespective of whether or not the agency may have previously attempted collection thereof."¹⁰

This declaration of principles has been adopted by the New York State Association of Collection Agencies¹¹ and also by the Commercial Law League of America,¹² and steps are being taken by these latter organizations to see to it that their members live up to these principles in the conduct of their business relations.

Furthermore, the American Bar Association has now assumed jurisdiction over the law list problem by the establishment of a standing committee with full jurisdiction to approve such lists as conduct their business by the adoption of standards of conduct approved by the Association, and the Canons of Professional Ethics have been amended so that they now prohibit any attorney from permitting his name to be listed in any but an approved law list.¹³

In order that lawyers engaged in commercial law practice shall understand that their relations with collection agencies and others are subject to the same restrictions as apply to every other branch of practice, a new canon has been adopted providing that no lawyer shall permit his professional services or his name to be used in aid of or to make possible the unauthorized practice of law by any lay agency, personal or corporate,¹⁴ and Canon 34 has been amended by deleting an exception heretofore contained therein which had the effect of tolerating a division between lawyer and layman of commissions on collection items forwarded to the lawyer by the layman. Canon 34 now absolutely forbids splitting of fees between lawyer and layman.

However, these various measures, though admirable in themselves, are only the first steps remedying a long neglected situation. The bar must continue vigilantly and effectively to uphold the standards of professional conduct, and to prosecute all lawyers who violate them in the commercial field. Reputable collection agencies who are now cooperating in the enforcement of the principles, and who are seeking to place the conduct of their business in its properly circumscribed field upon an ethical plane should be aided and encouraged to police their own industry. The

¹⁰ Adopted by American Bar Association Committee, May 4, 1937; New York State Bar Association Special Committee on Collection Agencies, July 26, 1937.

¹¹ On October 5, 1937.

¹³ Canon 43, as amended in 1937.

¹² On August 16, 1937.

¹⁴ Canon 47 (adopted 1937).

courts should be made more aware of the conditions described in this article, and should use the power vested in them by statutes and common law to regulate the practice of law by lawyers and the unauthorized practice by laymen who assume to practice, either inside or outside the court room. This will aid both the bar and the reputable collection agencies in preventing the abuses which have been described. In many states, the courts have this power inherent in themselves.¹⁵ In New York recently, the Supreme Court was granted jurisdiction, not only over lawyers, which it had previously, but also over "all persons assuming to practice law," and unauthorized practice of law was made a contempt of court.¹⁶

The American public will support vigorously the movement to cleanse the Augean stable of commercial law practice when once it understands our true purposes and objectives. But, the ultimate solution of the problems discussed will depend on obtaining the thorough-going cooperation of the great commercial community of the United States, and how this can be secured involves the public relations of the bar, a subject which cannot be discussed within the limitations of this article.

¹⁵ Massachusetts, Illinois, Minnesota, Virginia, Ohio, Missouri, Kansas, Vermont, Louisiana, and Rhode Island.

¹⁶ N. Y. Laws 1937, c. 311.