BY DAVID D. DODGE

Clients and Their Creditors

Ethical Rule 1.2(d) of the Arizona Rules of Professional Conduct[1] provides that a lawyer must never counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent. And much of what we as lawyers do, especially in the debtor–creditor field, if not done correctly, can expose us to problems if we lose sight of our ethical responsibilities to the justice system.

An example of these problems can be found in the recent case of *Morganroth & Morganroth v. Norris, McLaughlin & Marcus, P.C.*[2] It involved a New Jersey law firm that was assisting automaker John DeLorean in avoiding paying a judgment for unpaid attorneys' fees. The firm was required to answer allegations of creditor fraud, civil conspiracy and aiding and abetting brought by the judgment creditor, another law firm.

> Much of what we as lawyers do in the debtor-creditor field can expose us to problems.

The case started with DeLorean's Michigan lawyer, Morganroth, suing for $6 million in unpaid legal fees. DeLorean defended the claim using the New Jersey law firm, Norris et al. A year later, the Norris firm helped DeLorean transfer his interests in a 430-acre farm to one of his corporations for a nominal sum. The Norris firm set up the corporation and did the paperwork memorializing the transfer. The transfer was ultimately set aside, and Morganroth took a judgment against DeLorean for its unpaid fees.

According to the complaint, the Norris firm also arranged to have stock owned by DeLorean sent to a U.S. Marshall's office to facilitate an execution on a judgment owned by DeLorean's brother, thereby becoming unavailable to satisfy Morganroth's judgment. As if this were not enough, the complaint also alleged that the Norris firm drew up a fictitious lease purporting to lease back to DeLorean, as guardian for his children, the interest just conveyed in the farm and then had it recorded by misrepresenting the facts to the county recorder.

The Third Circuit held that, assuming the allegations of the complaint were true, the Norris firm's actions went beyond the bounds of permissible advocacy and that it had become an active participant in what was described as a scheme to obstruct execution of Morganroth's Michigan judgment. The case was returned to the district

Ethics Opinions are available on page 71 and at www.azbar.org/EthicsOpinions

David D. Dodge is a partner in the Phoenix law firm Lieberman, Dodge, Gerding & Anderson, Ltd. He is a former Chair of the Disciplinary Commission of the Arizona Supreme Court.

court for trial.

In Arizona, a person (that would include a lawyer) is guilty of a class 2 misdemeanor if he or she is a party to any fraudulent conveyance made or contrived with the intent to deceive, defraud, defeat, hinder or delay a creditor.[3] A "creditor" is defined in Arizona's Fraudulent Transfer Act as a person who has a "claim"—"a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured."[4]

Any lawyer asked by a client to hinder or delay a creditor really needs to read this statute. There are many statutes in the federal system that caution counsel about aiding and abetting fraudulent behavior.[5] Protecting a client by guiding it through the Bankruptcy Code is one thing; assisting it in defrauding a creditor is another. Both the client and the lawyer should understand the difference before the lawyer undertakes the representation.

endnotes

1. Rule 42, ARIZ.R.S.CT.
2. 331 F.3d 406 (3rd Cir. 2003).
3. A.R.S. § 441211 (Fraudulent conveyance or other transaction with intent to defraud others or defeat creditors).
4. A.R.S. § 441001(2) and (3) (definitions).
5. See, for instance, 18 U.S.C.A. § 152 (concealment of assets, etc.); 18 U.S.C.A. § 157 (bankruptcy fraud); and 28 U.S.C.A. § 3304 (fraudulent transfer involving debts to the United States).