

Opinion No. 16-1748

March 1, 1916

BY: FRANK W. CLANCY, Attorney General

TO: Major W. H. H. Llewellyn, Las Cruces, New Mexico.

As to professional conduct of attorneys.

OPINION

{*321} I take the first opportunity I have had to answer your letter of the 24th ultimo, which reached here while I was in Las Cruces.

The case which you state and as to which you ask advice, appears to be that A and B were law partners and attorneys for a bank; C was indebted to the bank and failed, after which A and B recorded a mortgage from C covering his real estate, on the face of which it appeared to have been executed months before. Examination of the record of the notary public who took the acknowledgment showed that the mortgage was not acknowledged until after C's failure. Another attorney representing other creditors of C, confronted A and B with this proof and thereupon A and B executed and delivered a satisfaction of the mortgage. You do not say to whom the mortgage was given, but I assume that it was to the bank for which A and B were attorneys.

The facts as thus stated, present a very bad appearance but may be susceptible of explanation. I always take the most charitable view possible of any conduct which appears to be out of the way, but it does look as though this matter ought to be investigated. It may be the fact that the mortgage was actually executed long before the failure, but for some reason or other had not been acknowledged and recorded. The notary public does not seem to be in a very good position if he signed the certificate of acknowledgment which was dated months before, but I can imagine that he might have done that inadvertently, merely noticing that the dates had been filled up without reading. If, upon investigation, it is made to appear that A and B obtained the certificate of acknowledgment and put the deed on record with intent to get some advantage over the other creditors of C, and on the face of it this would appear to have been the intention, they are guilty of a most disreputable and unprofessional proceeding.

As to giving any advice about what should be done, I cannot do more than to call your attention to the statutory provisions to be found in Sections 364 and 373 of the Codification, the first of which points out that any accusation against an attorney must first be presented to the Board of Bar Examiners, of which board the clerk of the supreme court is ex-officio secretary. At the same {*322} time, I call your attention to Section 361 which states the causes for which an attorney may be disbarred, in connection with which you should also read Section 353. In view of a decision of the supreme court last year, it is possible that the court might not hold the matters of which

you have written to me to be sufficient as a ground of disbarment no matter how dishonest or immoral. Possibly, however, the court might take a different view if another case were brought before it.