

NEW YORK STATE BAR ASSOCIATION
Committee on Professional Ethics

Opinion #336 - 4/25/74 (12-74)

Topic: Conflict of interest

Digest: A law firm whose practice includes representing defendants in criminal actions may continue such practice despite the fact that a relative of a member of the firm has been elected district attorney for the county in which the firm practices

Code: Canon 9; EC 9-2; DR 9-101

QUESTION

May a law firm whose practice include representing defendants in criminal actions continue such practice if the son-in-law and brother-in-law, respectively, of father and son members of the firm has been elected district attorney in the county in which the firm practices?

OPINION

The instant question is markedly different from questions presented to this Committee relating to defense of criminal actions by law firms, a member or associate of which is a part-time assistant district attorney in the county, or in an adjacent county, in which the action is pending. N.Y. State 40 (1966); N.Y. State 82 (1968); N.Y. State 152 (1970); N.Y. State 257 (1972). The impropriety involved in those opinions stems from the fact that the part-time assistant district attorney was a member or an associate of the firm seeking to defend criminal actions in the county of his appointment. In the instance situation, no such professional relationship exists.

Furthermore, in the above quoted opinions, the impropriety could be lifted by the part-time assistant district attorney severing his connections with the law firm in question. In the instant situation there never was a partnership or association between the parties in question. The adoption of a flat rule that no law firm, a member or associate of which happens to be related to a district attorney, can defend criminal actions in such county would be unnecessary and unduly harsh.

Accordingly, the existence of the relationship per se does not disqualify the law firm from continuing to practice criminal law in the county in which a relative of a member or members of the firm is district attorney. However, care should be exercised on a case by case basis to ensure that on particular facts and circumstances the strictures of the Code are observed to avoid any impropriety or, importantly, the appearance of impropriety enjoined by Canon 9. See also, DR 9-101 and EC 9-2.