

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

grow stronger, and make it an even better place to live and work and raise our children. It's a very gratifying thing to serve on The...Board; working with and for my good neighbors.' The sentiment is representative of all the men who serve as Directors of The...., we think. And that's another reason why we think you'll enjoy saving--and borrowing--at The....: you know you're doing business with people whose interests in.... are the same as yours!"

The question presented is whether this kind of publicity is inappropriate, in poor taste, or in violation of the Canons of Ethics.

OPINION

Canon 27 of the Canons of Professional Ethics states in part that "it is unprofessional to solicit professional employment by circulars, advertisements, through touters or by personal communicators or interviews not warranted by personal relations. Indirect advertisements for professional employment such as furnishing or inspiring newspaper comments, or procuring his photograph to be published in connection with causes in which the lawyer has been or is engaged or concerning the manner of their conduct, the magnitude of the interest involved, the importance of the lawyers' position, and all other like self-laudation, offend the traditions and lower the tone of our profession and are reprehensible;***."

Canon 29 provides in part "He [lawyer] should strive at all times to uphold the honor and to maintain the dignity of the profession **."

The Committee is of the opinion that the contemplated advertising release, as set forth above, is in clear violation of Canons 27 and 29 of the Canons of Professional Ethics.

Opinion #32 - 7/8/66 (2-66)

Topic: Sharing Executor's Fees with Partner.

Digest: Partners of law firm may share fees which one partner receives as executor of an estate.

Canon: Former Canon 34

QUESTION

May an attorney-at-law who is a member of a law partnership, which acts as the attorneys for an estate of which the attorney is an Executor, share the commissions received as Executor with his law partners?

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OPINION

It is not unethical for partners of a law firm to share compensation which one partner has received as Executor of an estate (compare, In re Hammersdorf's Will, 125 N.Y.S. 2d 276, Sur. Ct., Westchester Co., 1953, where an assignment of Executor's commissions before they were awarded by the Court was declared to be void).

The only prohibition in the Canons of Legal Ethics concerns the division of legal fees without the sharing of responsibility or work (Canon 34). It might be argued that Executor's commissions are not legal fees and would therefore not come within the confines of Canon 34. But even if they should be considered as legal fees, there is no reason why they should not be shared with partners. Partners share with their fellow partners the responsibility for all the work of the office and they are therefore entitled under Canon 34 to share their fees. Such sharing of fees by partners is well understood by clients, serves a valid purpose, and is not subject to the evil which Canon 34 was designed to avoid. (Clearly distinguishable is In re Annunziato's Estate, 108 N. Y. S. 2d 101, Sur. Ct., Kings Co., 1951, prohibiting a division of legal fees between unrelated attorneys where no responsibility or services were shared.)

Opinion #33 - 9/22/66 (13-66) Topic: Conflict of Interest.
Public Defender.

Digest: Proper for Assistant Public Defender to represent defendant with interests which conflict with defendant represented by Public Defender.

Canon: Former Canon 4

QUESTION

The office of Public Defender has recently been created in one of the Counties of this State. His job is to represent indigent defendants. The Public Defender resides in the County but generally carries on the practice of law in an adjoining County.

Occasionally the Public Defender cannot represent certain defendants because of a conflict of interest and it has been suggested that the office of Assistant Public Defender be created and an individual be appointed to this position to serve only when, because of a conflict of interest, the Public Defender cannot serve. The Assistant Public Defender would be paid a fee only when working in his official capacity, would not be practicing out of the same office as the Public Defender, and would have no connection with the Public Defender outside of similarly serving as a public defender.