

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

The attorney has subsequently become associated with the firm representing the plaintiff who obtained the jury verdict and wishes to know whether it is ethical for him to argue the appeal on behalf of such plaintiff-respondent.

OPINION

It would not be proper for an attorney to argue such an appeal. Such a conclusion is not affected by whether or not the attorney actually participated actively in the trial in which his original client was named as defendant, nor does it depend upon whether the attorney obtained confidential information in the course of such trial which might affect the conduct of the appeal. On the facts as stated, it would obviously be in the best interests of the original client for the verdict in the case that was tried to be reversed on appeal and therefore it would be unethical for the attorney to urge affirmance of this verdict to the detriment of his original client.

Opinion #97 - 1/30/69 (1-69)

Topic: Conflict of Interest.
Digest: May an attorney represent
creditor and bankrupt.
Canon: Former Canon 6

QUESTION

May an attorney who represents a creditor also represent the same creditor's debtor in a bankruptcy proceeding?

OPINION

It is the opinion of the Committee that it would be improper for an attorney to represent both the claimant and the bankrupt in the same proceeding.

Canon 6 of the Canons of Professional Ethics states that "It is unprofessional to represent conflicting interests, except by express consent of all concerned given after a full disclosure of the facts."

This Canon does not sanction representation of conflicting interest in every case where consent is given. (Drinker on Ethics, page 120, N.Y.State Nos. 38 and 74.)

As is indicated in Canon 6 "A lawyer represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose."

Ethics committees have repeatedly forbidden attorneys to represent adverse parties. In a bankruptcy proceeding the interest of the creditor and the bankrupt are adverse. Hence it would be improper for the same attorney to represent both of these parties. (ABA 60, 177, ABA Inf. 930, Drinker on Ethics, page 112.)