

**NEW YORK STATE BAR ASSOCIATION**  
**Professional Ethics Committee Opinion**

2. Assuming that no Florida law or provision of the Florida Canons of Ethics is violated thereby, a New York attorney can properly draw an answer on behalf of a New York defendant and mail it to the Florida court, so long as it contains no false allegations or misrepresentation of facts, and is not collusive.

3. Under these conditions, a New York attorney may charge his client a fee for such services.

In reaching these conclusions, the Committee is of the opinion that the decisions reached in Spivak vs. Sachs, 16 N.Y. 2d 163 (1965), and Spanos vs. Skouras Theatres Corp., 364 Fed 2d 161 (1966), are distinguishable.

Opinion #109 - 6/10/69 (14-69)

Topic: Conflict of Interests  
Intermediaries  
House Counsel

Digest: House counsel defending  
assureds.

Canons: *Former Canons 6, 35*

QUESTION

An attorney asks the following two questions:

1. May an attorney be retained or employed as "house counsel" for an insurance company either on a retainer or salary basis to defend assureds in negligence actions?

2. Is the insurance company practicing law if it retains the attorney under the conditions as outlined in question 1?

OPINION

It is the opinion of the Committee that it is proper for an insurance carrier to hire an attorney as house counsel to defend its assureds.

The American Bar Association Committee on Professional Ethics states in its Opinion No. 282 that an attorney employed by an insurance company exclusively, upon a salary basis, may defend lawsuits against assureds on behalf of the company without making any charge to the assured, and without the request or the approval of the assured. The reason for this position is that the insurance contract specifically gives the company control over the defense of any action brought against the assured. The main purpose of a liability insurance policy is to relieve the insured from the responsibility of the defense of the action and the payment of litigation expenses or judgments which might result. It is also to the interest of the company that the lawyer defeat claims which the company may be required to pay and there is a community of interest between the company and the insured. The lawyer employed by the company cannot be said to be violating either the spirit or the letter of the provisions of Canons 6 and 35 concerning conflicting interests and intermediaries.

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Question No. 2 , namely whether the action of the company constitutes the unlawful practice of law, is a legal question on which this Committee does not pass. Accordingly, the question is being referred to the Unlawful Practice of Law Committee of the Association.

See NYSBA Unlawful Practice of Law Committee Opinion #13

Opinion #110 - 6/10/69 (10-69)

Topic: Conflict of Interests  
Digest: Improper for city councilman to represent private property owners in condemnation proceedings before an independent but related public body such as Urban Renewal Agency  
Canon: *Former Canon 6*

QUESTION

The inquirer wishes the Committee to advise him as to whether he may represent private property owners in condemnation proceedings before an independent Urban Renewal Agency (Agency) while he is an elected member of his city's Common Council. A relationship between the Agency and the Council exists in that the Council approves proposed projects of the Agency and the Council approves mayoral appointments to fill vacancies in the Agency. The city which the Council serves will ultimately be responsible for bearing 1/8th of the costs of the urban renewal projects. The initial approval of the urban renewal project by the Council was given before the inquirer was elected to the Council.

OPINION

The Committee is of the opinion that the representation of private interests by a councilman in this situation would involve a conflict of interests as proscribed by Canon 6.

This Canon provides in part:

"It is unprofessional to represent conflicting interests, except by express consent of all concerned given after a full disclosure of the facts. Within the meaning of this canon, 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."

An attorney who is a city councilman and who wishes to appear on behalf of a private party before another public agency has a duty to contend for the highest award possible on behalf of his private client (indeed his fee may be based on the award) and he has a conflicting duty as councilman to cause the city's affairs to be conducted as economically as possible. Recognizing the practical inability of any condemnation tribunal to determine the exact value of property in question, it is clear that either the city or the property owners could suffer by receiving less than the full efforts of the inquirer on their behalf.