

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

QUESTION

May a lawyer insert a provision in a will that the executor employ the lawyer as attorney for the estate?

OPINION

EC 5-6 provides:

"A lawyer should not consciously influence a client to name him as executor, trustee, or lawyer in an instrument. In those cases where a client wishes to name his lawyer as such, care should be taken by the lawyer to avoid even the appearance of impropriety."

The answer to the question depends on the surrounding circumstances. If they are such that the lawyer might reasonably be accused of using undue influence, the provision should be avoided.

Where there is no indication of overreaching and the suggestion originates with the testator, there is no objection to such provision provided it be clearly explained to the testator that the provision will not be binding upon the executor who will be free to choose his own attorney since a lawyer has no vested interest in representing the estate of one whose will he has drawn. A testator may reasonably believe that it is to the distinct advantage of his estate to have the benefits of his attorney's intimate knowledge of his affairs. It would seem more appropriate to have the will contain a recommendation to the executors with the testator's reasons therefor, rather than a direction.

The lawyer, however, may not properly have the executors named in the will execute a retainer agreement with him prior to the testator's death. Drinker, Legal Ethics 94 (1953); N.Y. City 580 (1941).

In cases where there is a possible appearance of impropriety, the lawyer should consider having the testator submit the will to another lawyer for review prior to its execution. See Drinker, Legal Ethics 94 (1953).

In the opinion of the Committee, the customary and regular inclusion of provisions in wills providing for retention of the services of the attorney drawing the will, without the specific request or suggestion of the client, is improper. ABA Inf. 602 (1963).

Opinion #141 - 5/28/70 (19-70) Topic: Conflict of Interest of Attorney - Legislator

Digest: Not proper for attorney who is county legislator to represent plaintiff whose cause of action against a township is based upon regulations of county legislature's agency

Code*: EC 8-8
 DR 8-101

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A county legislature, by its agency, has issued regulations with which a township within the county has failed to comply. May a county legislator, an attorney practicing privately, represent a client in an action against the township to enforce compliance?

OPINION

It is the opinion of the Committee that it would be improper for the lawyer to represent a private client under these circumstances.

EC 8-8 provides:

"Lawyers often serve as legislators or as holders of other public offices. This is highly desirable, as lawyers are uniquely qualified to make significant contributions to the improvement of the legal system. A lawyer who is a public officer, whether full or part-time, should not engage in activities in which his personal or professional interests are or foreseeably may be in conflict with his official duties."

If the municipality against which the suit is brought should contest the interpretation being placed on the regulation by the attorney or should appeal to the county agency or the county legislature for modification or repeal of the regulation or for an extension of time for compliance, the attorney as a member of the county legislature would be unable to perform his official function without being influenced by the private interests of his client, and vice versa. Moreover, his membership in the county legislature might give his private client an undue advantage over the defendant in view of the fact that the matter in suit involves an act of the county legislature. This apparent inequity would create an impression of impropriety in the eyes of the public.

Opinion #142 - 7/2/70 (17-70)

Topic: Business interests of lawyers
Title Abstract Co.

Digest: Proper for lawyers to operate
title abstract corporation for
service to lawyers

Code*: DR 2-102 (E)

QUESTION

May a law firm form and operate a title abstract corporation for service to attorneys, the letterhead bearing the name and address of the corporation, the names of the officers of the corporation, without however identifying them as attorneys, but with the same address as that of the law firm?

OPINION

In ABA Inf. 726 (1963), that committee stated:

"Since the preparation of an abstract may properly be done either by lawyers or by laymen, we can see nothing wrong with the formation of a corporation for the purpose"