

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

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

QUESTION

An assistant district attorney is a member of a law firm with offices in two counties. May the firm represent defendants in other counties in which the partner is not an assistant district attorney?

OPINION

It is the opinion of the Committee that it would be improper for the firm to represent defendants in other counties.

In N.Y. State 99 (1969) it was held that it was improper for an assistant district attorney to represent an accused in an adjoining county because of possible conflict of interest.

In addition, Canon 9 specifically states that a lawyer should avoid even the appearance of professional impropriety. (See also D.R. 9-101, E.C. 9-2).

It is the opinion of the Committee that it would give the appearance of impropriety for the district attorney or an assistant district attorney to represent the people in one county and the firm of which he is a partner or associate to represent defendants in criminal matters in another county.

Opinion #153 - 9/8/70 (38-70) Topic: Advise to Client

Digest: Lawyer has duty to advise client of reputation of person with whom client is about to do business

Code*: EC 2-26; EC 2-32;
DR 2-110 (C) (1) (e);
EC 5-1; EC 7-8

QUESTION

Does an attorney have a duty and obligation to advise his client of the reputation of a person or business entity with whom the client is about to enter into a business relationship?

OPINION

EC 5-1 provides:

"The professional judgment of a lawyer should be exercised, within the bounds of the law, solely for the benefit of his client and free of compromising influences and loyalties. Neither his personal interests, the interests of other clients, nor the desires of third persons should be permitted to dilute his loyalty to his client."

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EC 7-8 provides that a "lawyer should exert his best efforts to insure that decisions of his client are made only after the client has been informed of relevant considerations. . . Advice of a lawyer to his client need not be confined to purely legal considerations."

A lawyer "is bound to form and tell his client his real opinion as to everything the client should know, and to advise him to do what he honestly believes to be in his best interest." Drinker, Legal Ethics 102-103 (1953).

Although a "lawyer is under no obligation to act as adviser or advocate for every person who may wish to become his client" (EC 2-26), his decision to withdraw once a matter has been undertaken "should be made only on the basis of compelling circumstances" (EC 2-32).

DR 2-110 (C) (1) (e) provides that a lawyer may in his discretion withdraw where his client insists, "in a matter not pending before a tribunal, that the lawyer engage in conduct that is contrary to the judgment and advice of the lawyer but not prohibited under the Disciplinary Rules."

Accordingly, in discharging his duty an attorney should advise his client about the reputation of a person or business entity with whom the client is about to enter into a business relationship.

This opinion is limited to the question of professional ethics involved and does not apply to any question of law.

Opinion #154 - 10/9/70 (2-70) Topic: Solicitation of Clients
by Mail.

Digest: Impropriety of lawyer "as general counsel" to solicit subscriptions for and subscribers to a tax information service of which he is the general counsel.

Code*: DR 2-102 (E)

QUESTION

The Committee's opinion has been asked on the propriety of an attorney's operating in corporate form a "financial tax and legal information service" which would publish and distribute financial, tax and legal information to doctors. The attorney would write letters to doctors soliciting their subscriptions to the service. The soliciting letterhead would bear the corporate business name and address, the address being the same as that of the attorney, and the attorney would be listed as "general counsel". The letter would be signed by the attorney personally and would set forth his views as to the merits of the publication.