

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

OPINION

It would be unethical for a judge to hold such an interest if it is illegal, or if the nature of his interest or the nature or reputation of the establishment where the beverages are sold are such as to detract from the dignity of his position, or if there is any possibility of a conflict. Otherwise, such ownership would not be unethical.

Opinion #159 - 10/9/70 (27-70)

Topic: Advertising.
Chamber of Commerce.

Digest: A law firm or individual members or associates may become members of a Chamber of Commerce.

Code*: EC 2-9
DR 2-102
Former Canon 27

QUESTION

May a law firm or any of its members or associates become a member of a Chamber of Commerce

OPINION

It is not unethical for an individual lawyer or his firm to belong to a Chamber of Commerce and to permit his name to be included in its membership list without identifying him as a lawyer. DR 2-102 forbids advertising but in view of the general character of chambers of commerce as a community service organization, membership by lawyers is not deemed to be advertising. ABA Informal #C-488 (1961).

With regard to identification of the lawyer as such in lists issued by the Chamber of Commerce, see N.Y. State 81 (1968) and ABA Informal 816 (1965).

Participation of the lawyer in Chamber of Commerce activities must not be used to advertise his services as a lawyer or to solicit business from fellow members or from the public.

Opinion #160 - 10/9/70 (37-70)

Topic: Communication with Adverse Party.

Digest: Attorney may not contact adverse party after the designation of counsel.

Code*: DR 7-104 (A) (1)
Former Canon 9

QUESTION

Does the Code of Professional Responsibility, DR 7-104 (A) (1), permit a lawyer to communicate with an adverse party who is a public officer or board member?

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"DR 7-104 Communicating With One of
Adverse Interest

(A) During the course of his representation of a client a lawyer shall not:

- (1) Communicate or cause another to communicate on the subject of the representation with a party he knows to be represented by a lawyer in that matter unless he has the prior consent of the lawyer representing such other party or is authorized by law to do so."

This section of the Code is substantially similar to former Canon 9 and has not changed existing opinions except to permit in certain jurisdictions, that which is specifically authorized by law.

A governmental unit has the same rights and responsibilities in a controversy as any other corporation or individual. The attorney for a governmental unit and opposing counsel must abide by the provisions of DR 7-104.

Therefore, once there is an indication that counsel has been designated by a party, whether a governmental unit or otherwise, with regard to a particular matter, all communications concerning that matter must thereafter be made with the designated counsel except as provided by law.

Opinion #161 - 10/9/70 (40-70)

Topic: Conflict of Interest.
Confidences of Client.

Digest: Representation of passengers in action against friend, insured driver, improper after lawyer interviewed and acted in behalf of driver.

Code*: DR 4-101 (B) and (C)
DR 5-105 (A) and (B)
EC 4-5 and 6
EC 5-14 and 15
Canons 4, 5 and 9

QUESTION

An attorney was requested by several persons to represent them in their claim for personal injuries sustained while passengers in an automobile driven by a good friend of theirs. The automobile had skidded from a highway and struck another automobile which was parked on a mall about five feet from the shoulder of the highway, killing the owner of the parked vehicle. At the scene of the accident the driver was served with a summons by a State Trooper for driving with a defective tire. Although desirous of making their claim against the driver, the passengers asked the attorney to do whatever was possible to defend the interests of the driver with whom they are very friendly and they assured the attorney that they would not under any circumstances seek a recovery in excess of the insurance policy limits, which were \$10,000/\$20,000.