

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinions

Opinion #205 - 10/26/71 (40-71) Topic: Conflict of Interest

Digest: Improper to represent both
estate and claimant against
estate in negligence action.

Code*: EC 5-15
DR 5-105

QUESTION

Where a lawyer represents the estate of a decedent who was fatally injured in a two car accident, may he also represent the son-in-law of the decedent in an action against the estate of decedent for personal injuries sustained while a passenger in the decedent's vehicle in the same accident?

OPINION

The question in this case is essentially the same as that decided in two previous opinions relating to actions by children against parents, N.Y. State 74 (1968) and N.Y. State 112 (1969). A lawyer should never represent in litigation multiple clients with differing interest. EC 5-15.

It is impossible to avoid a conflict of loyalty in the situation described in the question. A decision has to be made whether to sue the lawyer's own client; even if an insurance company is involved, cooperation with the insurance company is required under the policy; it may become the duty of the attorney to press for recovery on behalf of the plaintiff against the estate exceeding the limits of coverage.

A lawyer so representing both parties could not possibly carry out his obligation of undivided loyalty to each of them. Such dual representation would be improper.

Opinion # 206 - 11/22/71
(53-70, 56-70,
4-71, 22-71)

Modifies #22 by implication
Modifies #128
Modifies #135 by implication
Overruled (in part) by 493, 494

Topic: Dual Practice of Law and
Allied Occupations.

Digest: Conditions under which
dual practice is permissible
reviewed and modified.

Code*: Canon 9
DR 2-101, 2-102, 2-103, 2-104,
2-105, 3-101, 3-102, 3-103,
5-101(A).

QUESTIONS

The Committee is receiving an increasing number of inquiries as to whether and under what circumstances a lawyer may engage in another business or profession or be associated with laymen in another business or profession. The following are inquiries now pending:

1. May a practicing lawyer engage in the practice of law and public accounting in one office?