



## Committee on Professional Ethics

Opinion #242 - 4/28/72 (60-71)      Topic: Legal services provided by lawyer employee of corporation to fellow employee.

Digest: Corporation's full-time lawyer employee may under specified conditions represent a fellow employee without charge in connection with transaction incident to a corporate employment transfer.

Code\*: Canon 5.  
EC 2-7; 5-1; 5-14; 5-15 and 5-16.  
DR 2-103(D); 5-101(A); 5-107(B).

### QUESTION

May an attorney employed full time on salary by a corporation that has a policy to provide reimbursement to its employees for legal services incurred in buying or selling their residential homes as a result of a company ordered transfer provide at the request of his employer legal services in connection with such purchase or sale without charge to the co-employee?

### OPINION

Representation of a fellow employee by a salaried full-time corporate lawyer employee was approved in ABA Inf. 476 (1964) where "the attorney is freely selected and compensated by the employee, is directly responsible to him, and no conflict of interest exists". The Code of Professional Responsibility makes no change in prior standards relating to such representation.

Since representation of a fellow employee is proper when the employee himself compensates freely selected counsel, it should not be held improper because the corporate employer compensates its lawyer employee by a salary paid directly to him in those cases where the services performed for the fellow employee are properly subject to reimbursement by the corporate employer. N.Y. State 78 (1968); ABA Inf. 679 (1963); ABA Inf. 469 (1961). There is no impropriety in a corporation reimbursing an employee for legal expenses incident to a change of location for purposes of corporate employment, provided such reimbursement is not conditioned on the employee retaining the corporation's lawyer employee or such other lawyer selected for him by the corporation.

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

Opinion #242

-2-

Any such representation by a corporate staff lawyer is, however, conditioned not only on the client employee's complete freedom to select independent counsel and to be reimbursed for the cost of such outside representation, but also on full compliance with all professional standards relating to conflicting interests. In addition to full disclosure of all possible conflicts, there must also be the informed consent of both the corporate employer and the client employee. DR 5-101(A) and 5-107(B). See also, Canon 5 and EC 5-1, 5-14, 5-15 and 5-16.

A further factor relating to the desirability of permitting a transferred employee to retain a corporate staff lawyer, if he wishes, is found in EC 2-7, which recognizes that the "selection of legal counsel is particularly difficult for . . . persons moving into new areas". The Code of Professional Responsibility was not intended to make it needlessly difficult for those requiring legal service to make an intelligent selection of competent counsel.

While DR 2-103(D) provides that a lawyer shall not knowingly assist an organization that furnishes or pays for legal services to promote the use of his services, we believe that the representation of a fellow employee under the circumstances here approved would involve no violation of this rule. If, however, the corporate employer affirmatively encourages, suggests, recommends or "promotes" the services of a staff lawyer to a transferred employee, the representation would be rendered improper under DR 2-103(D).

N.Y. State 53 (1967); N.Y. State 53(a) (1967); N.Y. State 76 (1968); and N.Y. State 78 (1968) concluded that under the former Canons it was generally improper for a corporation to perform legal services for corporate employees or to employ lawyers to represent them. We do not now consider whether these opinions require modification by reason of any changes made in the Code. We only hold that these opinions should not be interpreted to forbid a lawyer from undertaking to represent a fellow employee without charge in the circumstances herein specified.

While this Committee does not pass upon questions of law, attention is invited to Judiciary Law Sections 495(1)(d) and 495(4), and our opinion is issued subject to limitations imposed by law.

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