



# Committee on Professional Ethics

Opinion #413 - 9/30/75 (63-75) Topic: Business relationship; prosecutor and defense counsel unrelated to practice of law

Digest: An assistant district attorney may not enter into a business unrelated to practice of law with an attorney who represents defendants being prosecuted by the district attorney who employs the assistant district attorney.

Code: Canons 5, 9  
EC 5-2, 9-2, 9-3, 9-6.

## QUESTION

May an assistant district attorney enter into business unrelated to the practice of law with an attorney who defends criminal defendants in a county where the assistant district attorney is employed if the assistant district attorney removes himself entirely from the prosecution of any defendants who are represented by the attorney.

## OPINION

The entering into of a business relationship by an assistant district attorney with an attorney who defends clients prosecuted by the district attorney's office, which employs the assistant involved, would be improper as violative of the Code. See Canons 5, 9; EC 5-2, 9-2, 9-3, 9-6.

The relationship between the assistant district attorney and his business associate, defense counsel, creates the appearance of impropriety and would therefore be violative of Canon 9.

It should further be noted that the "People" may not waive any conflict of interest that may exist, N.Y. State 364 (1974), N.Y. State 323 (1974), and therefore the business relationship between the attorney and the assistant district attorney would be improper.

The fact that the assistant district attorney would remove himself from all cases which involved his business partner as counsel does not change the result. N.Y. State 118 (1969); N.Y. State 214 (1971).

This opinion is concerned with the circumstance of propriety of entering into the relationship described. It does not deal with, and no opinion favorable or unfavorable is indicated, in the situation where the business relationship was established prior to the lawyer being appointed an assistant district attorney.