

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

OPINION

This Committee is of the opinion that it would not be professionally improper for the lawyers as individuals, or in partnership, to render the contemplated legal research service to other lawyers. The Committee does not pass on questions of unauthorized practice of law and renders no opinion as to whether Canon 47 of the Canons of Professional Ethics would be violated if the service were offered through a corporation. See Penal Law, Section 280; American Bar Association Committee on Professional Ethics Opinion 273, and The Association of the Bar of the City of New York Opinion 778.

The service may properly be offered to other lawyers in conformance with Canon 45 of the Canons of Professional Ethics (see The Association of the Bar of the City of New York Opinions 851 and 705), but may not properly be rendered or offered to business corporations or other non-lawyers. To do so would be regarded as improper solicitation of legal business in violation of Canon 27 of the Canons of Professional Ethics.

Opinion #28 -- 3/10/66 (16-65) Topic: General Release by Minor Defendant.

Digest: Counsel must determine if it is in best interest of minor defendant to execute a general release to have criminal charges dropped.

Canon: None

QUESTION

1. May defense counsel, representing a minor defendant on a criminal charge, properly and ethically advise the minor defendant and/or his parents to execute and deliver their general releases to the complainant under the following circumstances: (a) The complainant has offered to withdraw or consent to dismissal without prejudice of the criminal charge conditioned upon receipt of such releases; (b) the releases are intended to release the complainant from possible claims for damages without payment of any moneys to the minor and/or the parents; (c) the releases shall be delivered and the criminal charge withdrawn without a compromise order to be made by the Court.

2. Would the situation be different whether or not the defense counsel has been retained to represent the minor in a civil action as well as the criminal case?

3. Is defense counsel subsequently subject to censure in the event that the minor repudiates the releases and sues for damages upon his attaining majority?

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If defense counsel is of the opinion that it is to the best interest of the minor that the proceedings be dropped, either because the outcome is unpredictable, or because he believes that the minor might suffer irreparable injury from undergoing a criminal trial even though acquitted, or for other cause, it would not be improper to advise the minor and his parents to execute the releases. However, the withdrawal of the complaint or dismissal without prejudice should be subject to the approval of the Court in which the criminal charge is pending, (Opinion No. 207, The Association of the Bar of the City of New York). Furthermore, to deliver or advise the execution of a release by or on behalf of a minor without complying with the requirements of Article 12 of the Civil Practice Law and Rules would be improper professional conduct. (See Matter of Shields, 16 App. Div. (2) 50.) Defense counsel should, of course, explain fully to the minor and his parents what their respective rights and liabilities are and the reasons for his advice. It makes no difference whether or not defense counsel has been retained to represent the minor in the civil action as well as in the criminal proceeding.

Opinion #29 - 5/20/66 (14-65) Topic: Impropriety Between Counsel and Bench.
Associate of Part-time Judge.

Digest: Improper for an associate to appear before Justice of the Peace where other Justice of the Peace is partner in the associate's law firm.

Canon: Judicial Canons 13, 30

QUESTION

There are two Justices of the Peace in the Town of X in New York State. The senior member of the firm of Y & Z has been elected one of the two Justices of the Peace of this town. A lawyer employed by the firm of Y & Z asks as to the propriety of his practicing in the name of the firm before the other Justice of the Peace and also whether he can handle cases that he has procured himself and not as an employee of Y & Z before the other Justice of the Peace. He states that he realizes, of course, that he cannot practice before Mr. Y, who is the other Justice of the Peace.

Is it proper for an associate of a law firm to appear for and represent clients in Justice's Court when one of the two Justices is the senior member of the law firm by which he is employed?