

NEW YORK STATE BAR ASSOCIATION  
Professional Ethics Committee Opinion

OPINION

It is not unethical for partners of a law firm to share compensation which one partner has received as Executor of an estate (compare, In re Hammersdorf's Will, 125 N.Y.S. 2d 276, Sur. Ct., Westchester Co., 1953, where an assignment of Executor's commissions before they were awarded by the Court was declared to be void).

The only prohibition in the Canons of Legal Ethics concerns the division of legal fees without the sharing of responsibility or work (Canon 34). It might be argued that Executor's commissions are not legal fees and would therefore not come within the confines of Canon 34. But even if they should be considered as legal fees, there is no reason why they should not be shared with partners. Partners share with their fellow partners the responsibility for all the work of the office and they are therefore entitled under Canon 34 to share their fees. Such sharing of fees by partners is well understood by clients, serves a valid purpose, and is not subject to the evil which Canon 34 was designed to avoid. (Clearly distinguishable is In re Annunziato's Estate, 108 N. Y. S. 2d 101, Sur. Ct., Kings Co., 1951, prohibiting a division of legal fees between unrelated attorneys where no responsibility or services were shared.)

Opinion #33 - 9/22/66 (13-66) Topic: Conflict of Interest.  
Public Defender.

Digest: Proper for Assistant Public Defender to represent defendant with interests which conflict with defendant represented by Public Defender.

Canon: Former Canon 4

QUESTION

The office of Public Defender has recently been created in one of the Counties of this State. His job is to represent indigent defendants. The Public Defender resides in the County but generally carries on the practice of law in an adjoining County.

Occasionally the Public Defender cannot represent certain defendants because of a conflict of interest and it has been suggested that the office of Assistant Public Defender be created and an individual be appointed to this position to serve only when, because of a conflict of interest, the Public Defender cannot serve. The Assistant Public Defender would be paid a fee only when working in his official capacity, would not be practicing out of the same office as the Public Defender, and would have no connection with the Public Defender outside of similarly serving as a public defender.

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It is asked whether there would be any ethical conflict in the Public Defender representing one or more defendants and the Assistant Public Defender representing one or more additional defendants where a conflict of interest exists between the defendant or defendants represented by the Public Defender and the defendant or defendants represented by the Assistant Public Defender.

OPINION

This Committee is of the opinion that it would be professionally proper for the Assistant Public Defender to represent a defendant or defendants having interests which conflict with the interests of a defendant or defendants represented by the Public Defender. The fact that the Public Defender and Assistant Public Defender occupy similar positions as public defenders is of no moment in light of the high responsibility resting on the Bar to defend indigent persons. See Canon 4 of the Canons of Professional Ethics; Opinion 55 of the Opinions of the Committee on Professional Ethics of the American Bar Association.

Opinion #34 - 11/8/66 (18-66) Topic: Advertising.  
Bold Type Print in City Directory.

Digest: Improper for lawyer to have name in bold type in law lists and directories where it is different from other names in listing.

Canon: Former Canon 27

QUESTION

The publisher of a city directory, in its classified directory, (yellow pages) under a listing of "ATTORNEYS AT LAW," set forth in bold type the names of only the attorneys who, in addition to the cost of the directory, paid a special price for listing under that category. Under a listing of "LAWYERS" all the lawyers in the city were set forth, with the names of those who paid the special price again in bold type and the others in ordinary type. One of the lawyers who refused to pay the special price advised the publisher of this Association's opinion #16 - 11/1/65 (5-65), and received the following reply:

"It is our understanding that unless we are requested by letter by the Bar Association not to run lawyers names in bold face type, the choice is left up to the individual directory subscriber."

The question is whether it is professionally proper for a lawyer to authorize the listing of his name in bold type in such a directory.