

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

"Is it ethical for an attorney to render free legal advice to employees of a corporation when his fee for services is paid by the corporation?"

In this earlier opinion this Committee held that such conduct would be professionally unethical. In essence, in its earlier opinion, the Committee concluded that the giving of free legal services to employees by the corporation-employed attorney would violate Canon 35 of the Canons of Professional Ethics. This Canon permits employment of an attorney by a corporation or other association but prohibits specifically the rendering by the employed attorney of legal services to the individual members of the association or employees of the corporation. The purpose of this Canon is the preservation of the personal relationship which should exist between attorney and client. In addition, such conduct was thought to be a violation of Canon 47 in that such conduct would be aiding the corporate lay agency in the unauthorized practice of the law.

The sole question, therefore, that remains is whether "free tax accounting" is included in the term "practice of the law". In cases involving the unauthorized practice of law, courts have recognized that "taxation is a sort of a hybrid of law and accounting and that the accountant must be given latitude in applying his knowledge of law to problems which arise in the establishment of an accounting system, in auditing and in the preparation of tax returns; yet they hold that an accountant must not render services which are inherently legal." (15 Ala. L.R. 517, at pg. 523.)

In 1951 the National Conference of Lawyers and Certified Public Accountants issued a Joint Statement of Principles Relating to Practice in Field of Federal Income Taxation. (See Interprofessional Twilight Zone Between Lawyers and Accountants, 29 Unauthorized Practice News 267 (Fall 1963).) Under these guidelines both the lawyer and the accountant may prepare income tax returns, but essentially, if accounting problems arise, the accountant should handle them. On the other hand if legal questions of interpretation or application occur they should be referred to an attorney. Thus, under this generally accepted approach, the attorney hired by the corporation would be violating these principles if he provided tax accounting for employees, either by giving them legal advice on these tax matters or by giving them accounting advice which should be reserved to the accounting professional.

Even if the lawyer is also an accountant, our opinion would be the same because of the practical difficulty of drawing a line between the two functions in this particular case.

Opinion #54 - 3/31/67 (4-67)

Topic: Conflict of Interest.
Confidences of Client.

Digest: Lawyer should decline employment where his knowledge of prior client's case might work to disadvantage of prior client.

Canon: Former Canon 37

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QUESTION

In 1960-61 an attorney originally represented the wife when she secured a divorce and order for child support, Subsequently, in 1963-64 while there was no apparent dispute with his former wife, the attorney was retained by the husband for whom he secured a discharge in bankruptcy. In 1966 the former wife, having returned to her native Germany and knowing no other lawyers locally, requested that the attorney endeavor to secure delinquent child support payments from her former husband, who is now being represented by another attorney.

OPINION

Would it be ethically proper for an attorney to represent a former wife seeking delinquent child support payments if he had previously represented the husband in a matter involving his financial affairs?

OPINION

Canon 37, entitled Confidences of a Client, provides that "It is the duty of a lawyer to preserve his client's confidences. This duty outlasts the lawyer's employment. . . (who shouldn't) accept employment which involves or may involve the disclosure of these confidences. . . to the disadvantage of the client, without his knowledge or consent. . ."

Clearly, the attorney was informed in the bankruptcy proceedings of financial and other information which could be utilized to the detriment and disadvantage of the former husband-client.

The lawyer in these circumstances should decline the employment unless he secures the consent of the former husband-client. (See also ABA opinion 150, 163; N.Y. City 98.)

There would be no impropriety in aiding the former wife to retain local counsel, giving her the names and addresses of the local legal referral service, if any, or the name and address of several other attorneys who are known to engage extensively in similar matters.

Opinion # 55- 3/31/67 (5-67)

Topic: Conflict of Interest.
Friendship Between District
Attorney and Judge.

Digest: Not improper for friendly relation-
ship to develop between Court and
prosecutor so long as impartial
decisions can be rendered.

Canon: Former Canon 3
Judicial Canons 5, 13, 26, 33

QUESTION

May District Attorneys or Assistant District Attorneys ethically practice before Justices of the Peace where they try cases of all types of offenses and misdemeanors and become very friendly with the Justice of the Peace?