

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

QUESTION

Question has been raised as to whether an attorney named to public office in New York City is prohibited from keeping his name in that of his former law firm and on its stationery. The attorney has represented that his firm has not and will not appear in any matter "remotely related" to the City Department with which he will serve, that his firm "will not appear before any agency of the city or prosecute any claim against the city in the courts" and that as to those few firm matters presently pending in the courts against the city he would "waive any claim for fees, and the firm name will not continue as counsel on said matters."

OPINION

The Committee is of the opinion that, assuming the effectuation of the representations made by the attorney, it would not be professionally improper to keep his name in that of his former law firm and on its stationery. However, it is to be emphasized that an attorney may not permit the use of his name in that of his former firm for the purpose of misleading his former clients or others into the belief that he is still active in respect to matters handled professionally by the firm. Canon 33 of the Canons of Professional Ethics; Opinion 97 of the Opinions of the Committee on Professional Ethics of the American Bar Association; Opinion 651 of the Opinions of the Committee on Professional Ethics of The Association of the Bar of the City of New York. Accordingly, if the attorney's official position requires his full time it should be indicated where his individual name appears on his firm letterhead, either that he is retired from the firm, or that he is on "leave of absence". Informal Decision 620 of the Standing Committee on Professional Ethics of the American Bar Association.

If the attorney's firm hereafter does represent a client in a matter with the city or have other official contacts with city officers the possibilities of conflict of interest and of valid or invalid assumptions of improper influence detrimental to the Bar would make it incumbent for the attorney to withdraw his name immediately from that of the firm and from its stationery. (See Opinion 332 of the Committee on Professional Ethics of The Assn. of the Bar of the City of New York.) Furthermore, as this Opinion 332 indicates, the practice of retaining the name of an attorney in the firm name and on its stationery where the attorney has entered government service is not to be encouraged, even if it does not specifically violate the Canons of Ethics.

Opinion #59 - 5/23/67 (18-67)

Topic: Legal Advice Without Attorney-Client Relationship.

Digest: Lawyer may serve as counsel to corporation or as chief executive officer, but he should not provide legal advice to subscribers of a service.

Canon: Former Canons 35, 47

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An attorney proposes to purchase a corporation which nationally advertises and which sells copyrighted bookkeeping records as well as a tax service which includes preparation of tax returns and the publication of a periodic tax letter. Purchasers of the service may submit tax problems to the corporation. The attorney would be the chief executive officer of the corporation; be on retainer to the corporation; answer the tax problems submitted to the corporation; as well as maintain his private practice of the law. Is such an arrangement in violation of any of the Canons of Professional Ethics?

OPINION

It is not improper for an attorney, separate from his law practice, to own stock in a corporation and to serve as a chief executive officer or as counsel to that corporation in respect of that corporation's legal problems, provided he does not use the corporation as a device for soliciting legal business. To the extent that the proposed arrangement involves supplying legal advice on specific questions submitted by purchasers of the service it violates the spirit and the letter of Canon 35, which reads as follows:

"35. Intermediaries

"The professional services of a lawyer should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and lawyer. A lawyer's responsibilities and qualifications are individual. He should avoid all relations which direct the performance of his duties by or in the interest of such intermediary. A lawyer's relation to his client should be personal, and the responsibility should be direct to the client. Charitable societies rendering aid to the indigent are not deemed such intermediaries.

"A lawyer may accept employment from any organization, such as an association, club or trade organization, to render legal services in any matter in which the organization, as an entity, is interested, but this employment should not include the rendering of legal services to the members of such an organization in respect to their individual affairs."

The corporation would be in the position of intermediary between the lawyer and the person seeking advice, and in effect would be exploiting the lawyer's professional services. [See our Opinion #56-3/31/67 (9-67).]

We do not pass upon the question of whether or not the corporation in the course of rendering its tax service would be engaged in the unauthorized practice of the law in violation of Section 280 of the Penal Law, but note that if it is, then the conduct of the attorney would violate Canon 47, prohibiting aiding the unauthorized practice of the law by a lay agency.