

NEW YORK STATE BAR ASSOCIATION  
Professional Ethics Committee Opinion

Opinion #95 - 1/30/69 (19-68)

Topic: Data Processing  
Digest: Law Office accounting  
information supplied  
to a data processor.  
Canon: Former Canon 37

QUESTION

May a law office, in the course of its accounting procedures, supply a data processor with information on cases in its office covering the date the case was received, the type of matter, the attorney source and attorney handling, the estimated date of completion, the estimated fee, billings, payments, outstanding amounts due, whether due for more than four months, and the amount of time spent by each attorney (1) if code numbers are used, or (2) if actual names are used?

OPINION

Whether a client's communication is of a confidential nature is usually a question of law. Drinker on Legal Ethics, page 132.

Canon 37 provides in part:

"It is the duty of a lawyer to preserve his client's confidences. This duty outlasts the lawyer's employment, and extends as well to his employees;-----."

This question has been considered in ABA Inf. 912 and 1002. An analogous situation was involved in ABA 154. The lawyer's professional duty prevents him from disclosing any information acquired by him in confidence. Assuming that the disclosure to a data processor was restricted to the stated information, that reasonable safeguards exist for protecting its confidentiality, and that it is supplied only for the purpose of law office accounting, it is the opinion of this Committee that the disclosure would be ethical irrespective of whether code numbers or actual names are used.

Opinion #96 - 1/30/69 (30-68)

Topic: Conflict of interest  
Digest: Improper for a lawyer to defend an appeal for a new client when a successful defense would be detrimental to the interests of a former client in a related matter.  
Canons: Former Canons 6, 37

QUESTION

An attorney represented a certain party as a plaintiff in a subrogation action. Before trial this action was consolidated with other actions in which this same client was a defendant. The issues in the subrogation action were not tried but it was stipulated that a verdict for the attorney's client as defendant in the other actions would entitle his client to recover in the subrogation action. The trial in the consolidated actions resulted in a jury verdict for the plaintiff.

**NEW YORK STATE BAR ASSOCIATION**  
**Professional Ethics Committee Opinion**

The attorney has subsequently become associated with the firm representing the plaintiff who obtained the jury verdict and wishes to know whether it is ethical for him to argue the appeal on behalf of such plaintiff-respondent.

OPINION

It would not be proper for an attorney to argue such an appeal. Such a conclusion is not affected by whether or not the attorney actually participated actively in the trial in which his original client was named as defendant, nor does it depend upon whether the attorney obtained confidential information in the course of such trial which might affect the conduct of the appeal. On the facts as stated, it would obviously be in the best interests of the original client for the verdict in the case that was tried to be reversed on appeal and therefore it would be unethical for the attorney to urge affirmance of this verdict to the detriment of his original client.

Opinion #97 - 1/30/69 (1-69)

Topic: Conflict of Interest.  
Digest: May an attorney represent  
creditor and bankrupt.  
Canon: *Former Canon 6*

QUESTION

May an attorney who represents a creditor also represent the same creditor's debtor in a bankruptcy proceeding?

OPINION

It is the opinion of the Committee that it would be improper for an attorney to represent both the claimant and the bankrupt in the same proceeding.

Canon 6 of the Canons of Professional Ethics states that "It is unprofessional to represent conflicting interests, except by express consent of all concerned given after a full disclosure of the facts."

This Canon does not sanction representation of conflicting interest in every case where consent is given. (Drinker on Ethics, page 120, N.Y.State Nos. 38 and 74.)

As is indicated in Canon 6 "A lawyer represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose."

Ethics committees have repeatedly forbidden attorneys to represent adverse parties. In a bankruptcy proceeding the interest of the creditor and the bankrupt are adverse. Hence it would be improper for the same attorney to represent both of these parties. (ABA 60, 177, ABA Inf. 930, Drinker on Ethics, page 112.)