

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

Opinion #99-5/2/69 (29-68)

Topic: Conflict of Interests
District Attorneys
Digest: Improper for an Assistant
District Attorney to repre-
sent an accused in an adjoining
county.
Canons: *Former Canons 6, 29*

QUESTION

May an Assistant District Attorney defend an accused in a criminal matter in a county other than the county in which he is a prosecutor?

OPINION

The Committee is of the opinion that a prosecuting attorney, upon his election or appointment to that office, should not defend a person in a criminal matter.

In ABA 30, it was held that a public prosecutor in one state may not properly defend a person accused of a crime in another state. The reasons given are that it might jeopardize the helpful cooperation between law-enforcement officers of different jurisdictions, that it would be harmful to the interests of the public, which should be the prosecutor's first duty, that it would lower the dignity and honor of the profession, and lawyers should remain above suspicion.

Canon 6 of the Canons of Professional Ethics provides in part:

"It is unprofessional to represent conflicting interests ...within the meaning of this canon, 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."

A prosecuting attorney is the legal representative of the people of the state in criminal matters. The lawyer must always put the interests of his client ahead of his individual interests. If there is the slightest doubt as to whether or not the acceptance of professional employment will involve a conflict of interests between two clients, or may require the use of information obtained through the service of another client, the employment should be refused.

Opinion #100 - 5/2/69 (4-69)

Topic: Newspaper Publicity
Digest: Press release referring to
attorneys - indirect advertising
Canon: *Former Canon 27*

QUESTION

Is it ethical for an attorney to promote, inspire or encourage a newspaper to publish a report regarding his individual attendance at a conference or symposium on a particular field of law also attended by the lawyers, emphasizing the name of the lawyer, the importance of the field of law and the importance of skill in such field.

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OPINION

Such conduct is unethical and a violation of Canon 27. (ABA Inf. C-479 and ABA Inf. 546.)

As stated in Matter of Connolly, etc., 18 App. Div. 2d 466, 478; 240 N.Y.S. 2d 126, 138:

"We agree, however, that, where a newsworthy or public interest article, published in a newspaper or magazine, is in good taste, a charge of a violation of canon 27 is not necessarily made out merely by proof of a lawyer's cooperation in the publication therein of certain of his activities or achievements....

"Broadly speaking the question is said to be one of professional good faith and good taste....There can be no justification for the participation and acquiescence by an attorney in the development and publication of an article which, on its face, plainly amounts to a self-interest and unethical presentation of his achievements and capabilities."

In this case the attorney was only one of many lawyers who attended the conference and singling him out for special attention was clearly an attempt to promote him as an attorney knowledgeable in a particular field of law. An attorney cannot ethically promote, inspire or encourage such publicity. (N.Y.State 67.)

Opinion #101 - 5/2/69 (7-69)

Harmonized by #101(a)

Topic: Direct communication with
adverse party
Digest: Direct communication with
bankrupt by lawyer trustee
in bankruptcy is improper
Canon: Former Canon 9

QUESTION

May an attorney who has been appointed a Trustee in bankruptcy communicate directly with the bankrupt concerning his assets, or must he communicate only with the bankrupt's attorney?

OPINION

Canon 9 provides: "A lawyer should not in any way communicate upon the subject of controversy with a party represented by counsel; much less should he undertake to negotiate or compromise the matter with him, but should deal only with his counsel."

A Trustee in bankruptcy represents the creditors and is necessarily a party adverse to the bankrupt. Accordingly, it is improper for a Trustee who is an attorney to bypass the attorney for the bankrupt.