

NEW YORK STATE BAR ASSOCIATION  
Professional Ethics Committee Opinions

"(A) In general.

- "(1) If permission for withdrawal from employment is required by the rules of a tribunal, a lawyer shall not withdraw from employment in a proceeding before that tribunal without its permission.
- "(2) In any event, a lawyer shall not withdraw from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of his client, including giving due notice to his client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules.
- "(3) A lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned."

Once an attorney accepts employment in a litigation matter, he is not at liberty to withdraw at will. Circumstances must exist making it either mandatory for him to withdraw or giving him the right to withdraw. Such circumstances are set forth in DR 2-110(B) and (C). If the client does not assent to the withdrawal of the attorney in a litigated action, permission of the Court to withdraw should be sought. This is required in order that the Court may determine whether the attorney has a right to withdraw over the client's objection and, if the Court determines that the attorney has such right, in order that appropriate arrangements may be made to protect the client's interests until other counsel is retained.

Opinion #179 - 3/1/71 (7-71)

Topic: Delegation of Professional Functions.

Digest: Professional functions cannot be delegated to a client.

Code\*: EC 3-6.

QUESTION

May a lawyer permit a client to use the lawyer's letterhead and affix the lawyer's name in sending out a standard series of collection letters prepared by an attorney.

OPINION

A lawyer may not delegate any professional functions or powers to his client (ABA 85 (1932); N.Y. County 102 (1916); N.Y. County 300 (1932)).

Counsel may not allow a collection department of a corporation to use his letterhead (ABA 68 (1932); N.Y. City 458 (1938); nor may a lawyer permit a collection agency to sign the attorney's name in making collections (N.Y. City 89 (1928)).

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However, as long as the lawyer retains full professional responsibility and his relationship with the client, he may delegate routine functions to lay persons (EC 3-6). It would not be improper to permit a stenographer in the office of the client to type the collection letters in the form prepared by the attorney and to forward them to the attorney, who would read, sign and mail the letters to the debtors in the event the letter met with the attorney's approval. N.Y. County 300 (1932).

Opinion #180 - 3/1/71 (8-71)

Topic: Conflict of Interest;  
Former Client.

Digest: Former partner should  
not represent adverse  
interest in matter  
originating during his  
partnership.

Code\*: Canons 5, 9  
DR 5-105,  
EC 4-6; 5-1, 2;  
EC 9-1,2

QUESTION

May a lawyer represent a purchaser in an action to recover the down payment on a contract based upon a claim that the transaction had never closed, when the contract of sale had been prepared in behalf of the seller by the lawyer's former law partner during the period of the partnership. The lawyer had no actual knowledge of the existence of the transaction while he was a partner, and the cause of action did not arise until after he had withdrawn from the firm.

OPINION

It would not be proper for a lawyer to represent the purchaser in an action which would involve the interpretation or enforceability of a contract prepared for the seller by the lawyer's former partnership while he was a member of the firm, even though he personally had no knowledge of the transaction while he was a partner. N.Y. State 96 (1968). See DR 5-105, EC 5-1, 2.

Because of his access to all of the files of the office and the close relationship among partners, each partner is presumed to have knowledge of the affairs of all clients of the firm and to have an attorney-client relationship with each client. N.Y. County 546 (1967). The obligations imposed by this relationship survive the termination of the lawyer's partnership. EC 4-6.

In ABA Inf. 885 (1965) the Committee quoted N.Y. County 202