



Committee on Professional Ethics

Opinion #356 - 9/10/74 (30-74) Topic: Beneficiary acting as attorney for estate.

Digest: Factual situation determines whether it is proper for an attorney who represents an estate to accept a bequest of which he did not know.

Code: Canon 9.
EC 5-2; 5-5.

QUESTION

May a lawyer represent the executor of an estate where the lawyer is a beneficiary under the Will?

OPINION

It is not improper for a lawyer to represent the executor of an estate where the lawyer is a beneficiary unless, because of the factual situation surrounding the estate and the bequest, a conflict of interest (EC 5-5) or an appearance of impropriety (Canon 9) will arise. If the bequest, for example, is a normal one under the circumstances such as gift to a relative or a former partner there is no ethical objection to his accepting it and continuing as attorney for the estate particularly where the lawyer was not the draftsman of the Will. Cf. N.Y. State 140 (1970). If, however, the circumstances are such or may become such subsequently as to place the attorney in a conflict of interest situation with other beneficiaries or the distributees of decedent, or as to cause an appearance of impropriety to exist, such as a Will contest, object to probate or construction proceedings affecting his interest, the attorney should either resign as attorney for the estate or decline the bequest. In all instances the attorney must subordinate his personal interest in the estate to that of the other interested parties. EC 5-2 provides in pertinent part:

"A lawyer should not accept proffered employment if his personal interests or desires will, or there is a reasonable probability that they will, affect adversely the advice to be given or services to be rendered the prospective client."
