

means to induce X to make full restitution of all assets improperly diverted from the estate.

EDITOR'S NOTE: See Note to Opinion No. 264, supra, for additional opinions on subject; see also Note to Opinion No. 253, supra, on subject of lawyer's duty with respect to delivery of file to succeeding lawyer.

Opinion No. 275 (January 31, 1963)

CONTINGENT FEES. Opinion No. 263 (July 9, 1959) holding that it is improper for an attorney to handle the collection of past-due obligations for support and maintenance ordered in divorce case in California on a contingent basis is withdrawn.

In Opinion No. 263 issued July 9, 1959, the Committee ruled that it was improper for an attorney to handle the collection of past-due obligations for support and maintenance ordered in a divorce case in California on a contingent basis.

The opinion turned on the question of whether as a matter of law in California such a contract was valid.

The Committee has reconsidered

the opinion and has concluded that since it rested on a determination of law, the answer to which is in doubt, and since it is not within the function of this Committee to pass on conclusions of law, and without now expressing its opinion on the legal question, it has determined that Opinion No. 263 is no longer the opinion of the Committee and should, therefore, be and is hereby withdrawn.

Opinion No. 276 (February 21, 1963)

ADVERSE AND CONFLICTING INTERESTS. A City Prosecutor employed on a part-time basis and engaged in the private practice of law may not ethically represent defendants in criminal actions arising in the Judicial District but not in the City by which he is employed.

The Committee has been asked to render an opinion on the following matter:

In a district composed of nine municipalities, city prosecutors are employed on a part-time basis and simultaneously engage in private law practice. Can such city prosecutors ethically represent defendants in criminal cases arising in the district, but not in the city by which they are employed as prosecutors?

A city prosecutor cannot ethically represent defendants in criminal cases.

Prior opinions of the American Bar Association Committee on Professional Ethics and Grievances and of this Committee unequivocally condemn as unprofessional conduct a public prosecutor's representation of persons charged with crime. The conduct is no less censurable because the public officer is a part-time em-

ployee, or because the defense is undertaken in a jurisdiction different from the place of his employment. See A.B.A. Op's: 30 (prosecuting officer of one state cannot defend persons accused with crime in another state); 34 (part-time city attorney cannot represent persons charged with crime and held for trial in county in which attorney's city is located); 118 (county prosecutor cannot undertake to obtain pardon or parole of offender convicted in another county); 142 (assistant prosecutor cannot appear on behalf of defendants in criminal cases); L.A. Op's. 242 (partner of part-time city attorney cannot defend persons charged with crime in city in which such city attorney employed); cf. 117 (former Assistant U.S. Attorney could not undertake defense of person charged with crime during period attorney was in U.S. Attorney's Office); and see, Drinker, Legal Ethics, 118-19: "A public prosecutor in one state may not properly defend a person

accused of a crime in another state; to permit this would undermine confidence in him and in his office."

The principal rationale of the opinions is that the conduct violates Canon 6 forbidding representation of conflicting interests. No question of consent can be involved as the public is concerned and it cannot consent. The positions of prosecutor and defense attorney are inherently antagonistic.

Other factors which have been considered are these: The cooperation between prosecutors and various law enforcement agencies, which benefits the administration of criminal justice, would be seriously impaired were the conduct condoned. (See L.A. Op. 242.) The same cooperation may permit the attorney to acquire confidential information and thus to lead him into a violation of Canon 37.

EDITOR'S NOTE: See Rules 5, 6 and 7; Opinion No. 273, supra.

Opinion No. 277 (June 17, 1963)

AIDING UNAUTHORIZED PRACTICE OF LAW—LAY EMPLOYEES. It is ethical for a lawyer to employ a layman to negotiate settlements of personal injury cases provided the lawyer does not delegate his professional discretion to the layman and provided that the assistance given by the layman does not constitute the practice of law.

The opinion of the Committee has been requested in the question of whether it would be unethical for a lawyer representing plaintiffs in personal injury actions to employ a layman to negotiate with the adverse parties' insurance companies with respect to the settlement of such cases.

A lawyer cannot properly delegate the exercise of his profes-

sional discretion to a lay employee. A layman working for a lawyer must, in all of his work, act as agent for the lawyer who must supervise his work and be responsible for his good conduct. (Opinion No. 85 of the A.B.A. Committee on Professional Ethics; Opinion No. 166 of this Committee).

The negotiation of settlements