

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-14
Issued: November 1962

This opinion was decided under the Canons of Professional Ethics, which were in effect from 1946 to 1971. Lawyers should consult the most recent version of the Rules of Professional Conduct and Comments, SCR 3.130 (available at <http://www.kybar.org>), before relying on this opinion.

Question 1: A father and his son, both licensed attorneys at law, are associated in their practice of law in the same office. The father files petition on behalf of an heir at law to have the son appointed administrator of an estate, with the father as attorney for the administrator. Is it ethical for the father to charge a fee as attorney in such case?

Answer 1: Yes.

Question 2: A father and his son, both licensed attorneys at law, are partners in the practice of law in the same office. The son is appointed administrator of the estate of a decedent. The father is named attorney for the estate. Is it ethical for any fee at all to be charged as attorney in such case?

Answer 2: Yes.

Question 3: Is it ethical for one partner in a law firm to be named as administrator, executor or trustee and the other partner represent him as attorney and receive a fee as attorney, with both partners sharing the commissions of the administrator, executor or trustee, and the fees as attorney?

Answer 3: Yes.

Question 4: A law firm has its secretary appointed as personal representative of a decedent's estate, and the law firm represents the personal representative as attorney. Is this an ethical arrangement?

Answer 4: Yes.

References: Canon 12, 27, 34

OPINION

None of the four situations directly violates the Canons of Professional Ethics; however, because each so closely approaches the line when the "spirit" of the canons are abused a categorical answer is difficult.

In Question 1, it is presupposed that an heir has employed the father; that the heir was fully informed about the father-son relationship and upon his own volition employed the father, the son or both. Based upon such assumptions Canon 27 is not involved and it is not improper for the father to represent the administrator, and accept whatever fee may be allowed by the court.

Under Question 2 it is assumed the appointment was made by agreement or with notice to all heirs, and no representation was made that an attorney would not be employed. Since the Court must approve all fees charged against an estate and since any charge, by a personal representative or attorney, should be based upon the amount and nature of services rendered, a violation of the canon does not occur. The question, however, does present a situation wherein it is assumed that it may be possible for two members of a firm to collect double for their services. Fees for the settlement of an estate should not be any greater nor less, because the service has been performed by one or more individuals. A lawyer's fee should never exceed the value of the services rendered.

The answer to the question presented in Question 3 is arrived at by deduction. If the partnership may ethically collect fees and commissions it may ethically divide them. Canon 34 is not violated. A violation of this Canon occurs only where the transaction involves a lawyer and lay representative or lawyers not members of the same firm.

The arrangement envisioned by Question 4 approaches an involvement with Canon 27, in that it is made to appear that the firm or attorney may be soliciting business for or through the secretary. It naturally follows that the estate may be charged more than necessary for its administration and involve a violation of Canon 12. It further insinuates an "arrangement" or "practice" may be engaged in that violates the spirit of one or more of the canons. The opportunity is present; the facts are not. Since Canon 34 prohibits the attorney from sharing in any fee the court may allow the personal representative the "arrangement" is not unethical. It could easily benefit the estate.

Accordingly, it is the opinion of the Committee that all questions must be answered in the affirmative.

Note to Reader

This ethics opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530 (or its predecessor rule). The Rule provides that formal opinions are advisory only.