

Committee Opinion
April 3, 1989

LEGAL ETHICS OPINION 1206

ATTORNEY/CLIENT RELATIONSHIP –
CONFLICT OF INTEREST – MULTIPLE
REPRESENTATION: ATTORNEY/
EXECUTOR REPRESENTING ONLY
SOME OF HIS FORMER CLIENT'S
BENEFICIARIES.

You have asked for guidance as to the proper course of action for an attorney who is named and qualified as executor of his client's estate in the following two situations.

The decedent/client owned a home, fully paid for, which she left to her surviving son and three daughters to share equally and which is not a part of the estate assets. Dissension has arisen between the heirs as to the disposition of the house and one daughter has filed a partition suit to force the sale of the jointly owned real estate. The other heirs (two daughters and a son), have retained the attorney/executor to represent their interests in the partition suit and the same attorney filed an answer on their behalf. Recently, the surviving son has made an offer directly to the other heirs to purchase their interest in the jointly owned real estate. His sisters are amenable to selling the house to their brother for the agreed upon price, subject to agreed upon conditions as to closing costs and payment of bills. The surviving son has also requested that the attorney/executor represent him in the real estate transaction, which the two sisters did not oppose. You wish to know if a conflict of interest would exist in the representation of the three heirs in the partition suit and whether or not a conflict of interest would exist in the representation of the surviving son in the real estate transaction by the attorney/executor.

Although the roles of executor and attorney representing some but not all of the beneficiaries might be in conflict as to the assets of the estate, the facts as you have presented them indicate that the real estate involved is not an asset of the estate. Thus, the Committee directs you to DR:5-105(C), which provides that a lawyer may represent multiple clients if it is obvious that he can adequately represent the interests of each and if each consents to the representation after full disclosure of the possible effect on the exercise of his independent professional judgment on behalf of each in the multiple representation. The Committee opines that the continued representation of three of the beneficiaries may result in a breach of your fiduciary obligation to the fourth beneficiary and as such, the Committee believes that her informed consent should be obtained as well. (See LE Op. 370)

The second situation involves whether the executor of the estate should pay a department store bill and utility bills, which accounts are in the name of the decedent's late husband, as an indebtedness of the estate, when the executor has not received proper notification under oath from the companies, and the surviving heirs are not amenable to having the estate pay for that indebtedness. An executor would be required to comply with the terms of the will or applicable law for the payment of certain debts of the estate.

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The question of which debts to be paid under which circumstances is a legal one which does not require consideration of an attorney's professional conduct and is, therefore, beyond the purview of the Committee.

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