

**Opinion 47**  
**February 1952**  
**18 Baylor L. Rev. 215 (1966)**

**CONFLICTS OF INTERESTS - EMPLOYMENT - WILLS**

The chief counsel of an independent executor of a will in a declaratory judgment proceeding to determine whether a note, a substantial asset of the estate, should be sold at a discount, who is also attorney for the maker and sole obligor of the note, should recuse himself from representing either party. A member of the chief counsel's firm is in no better position than the chief counsel and may not represent a corporate defendant legatee.

**CONFLICTS OF INTERESTS - EMPLOYMENT - WILLS**

An attorney for persons charged with embezzlement from an executor may not represent the executor in a declaratory judgment proceeding to interpret a will.

**CONFLICTS OF INTERESTS - EMPLOYMENT - WILLS**

An attorney being paid a retainer fee by the plaintiff executor in a declaratory judgment proceeding to interpret a will, may not represent a defendant legatee.

**CONFLICTS OF INTERESTS - CANDOR AND FAIRNESS - CONFIDENCES OF A CLIENT - WILLS**

An attorney being paid a retainer fee by the plaintiff executor in a declaratory judgment proceeding to interpret a will, who represents a defendant legatee, and who attempts in open court to have the court incorporate in the judgment an order allowing the executor to sell the defendant (client) legatee's devised property, the sale not raised by a pleading or answer or directed by the will and the client not wishing to sell, violates Canons 6, 19, and 34.

**JUDGE'S CONDUCT - DECLARATORY JUDGMENTS**

Whether the trial judge should have disqualified any of the attorneys in a declaratory judgment proceeding to interpret a will, when it is known to the parties in court, their attorneys, and the judge that plaintiff's attorney also represented the person who wished to buy defendant legatee's devised property, and that defendant's attorney cooperating with plaintiff's attorney introduces evidence suggesting the sale of the property, is an opinion outside the scope of the Canons and the functions of the committee.

Canons 6, 19, 34. A.B.A. Judicial Canons 11, 20, 34.

**QUESTION**

An independent executor of a will, in the capacity of plaintiff, brings a declaratory judgment proceeding seeking the interpretation of a will and asking for instructions as to dealing with the several heirs and legatees who have been named as defendants and the handling of the corpus of the estate. A substantial asset of the estate is a \$350,000.00 note and instructions are sought as to whether or not this note should be sold at a discount. Some of the heirs and legatees have answered in the suit charging the executor and trustee with incompetence, negligence and mismanagement of the estate.

Based upon the foregoing statement, the following questions are asked:

**QUESTION**

Is the chief counsel for such an independent executor and trustee who is also the attorney for the maker and sole obligor of said \$350,000.00 note, the maker obviously the one prospective purchaser who could benefit most from a discounted sale of said note, disqualified as an attorney in such case?

## **OPINION**

It is the unanimous opinion of the committee that there is an obvious conflict between the interests of the independent executor and the maker and sole obligor of the \$350,000.00 note, and that such conflict would demand that the chief counsel recuse himself from representing either party. (9-0)

## **QUESTION**

Should a member of the chief counsel's firm, plaintiff's attorney, be appointed, at the suggestion of the chief counsel in open court, to represent a corporate defendant legatee?

## **OPINION**

It is the unanimous opinion of the committee that a member of the chief counsel's firm would be in no better position than would the chief counsel himself, and that a member of the firm should not undertake to represent the corporate defendant legatee. (9-0)

## **QUESTION**

Is it proper for an attorney or counsel and the trial attorney for the plaintiff executor and trustee, who is also representing several persons charged with embezzlement from the plaintiff executor and trustee, though not charged in this case, to accept employment by the plaintiff executor and trustee in this case?

## **OPINION**

It is the unanimous opinion of the committee that the attorney who is representing persons who are charged with embezzlement from the executor and trustee would obviously be disqualified to accept employment from the executor and trustee in this matter. (9-0)

## **QUESTION**

Should an attorney, being paid a retainer fee by the plaintiff executor and trustee, accept employment by a legatee in this case?

## **OPINION**

It is the unanimous opinion of the committee that while said attorney is on a retainer fee basis with the executor and trustee, he would be disqualified from accepting employment from one of the defendant legatees. (9-0)

## **QUESTION**

If the attorney did accept employment by the legatee, is it a violation of the Canon of Ethics for such attorney to attempt in open court to have the court incorporate in the judgment an order allowing the trustee to sell the client's devised property, such sale not being raised by any pleading or answer or directed by the will and the client not wishing to sell?

## **OPINION**

It is the unanimous opinion of the committee that such course of conduct should be condemned as being in violation of Texas Canon 6, dealing with Adverse Influences and Conflicting Interests, Texas Canon 19, dealing with Candor and Fairness, and Texas Canon 34, dealing with Confidences of a Client. (9-0)

## **QUESTION**

It was a well-known fact to all the parties in court, their counsel and the judge that the plaintiff's trial counsel was also the attorney who represented the person who wished to buy the aforementioned property, he being the tenant of the property, and that said defense counsel cooperating with the plaintiff's counsel, proceeded to introduce evidence suggesting the sale of said property. The trial judge did not object to any of the above, though all of the above was made known in open court. Should the trial judge

have disqualified any of the above attorneys?

**OPINION**

We do not have a code of Canons of Judicial Ethics such as the American Bar has. The American Bar Judicial Canons 11, 20 and 34 would all have bearing upon a situation of this nature. The committee feels that an opinion in this regard is outside the scope of the Canons and the functions of the committee. (9-0