

Opinion 36
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18 Baylor L. Rev. 211 (1966)

CONFLICTING INTERESTS - EMPLOYMENT - WILLS

An attorney who has represented one of sixteen heirs in a will contest, such will, covering a minor part of the estate, having been admitted to probate, should not accept employment by the administrator of the residue estate when the administrator may have to decide questions involving a conflict of interests between the one heir and the remaining heirs. If the employment is accepted and a question arises concerning the interpretation of the will as to whether or not the assets of the residue estate should be sold to pay a bequest and the attorney in the will contest had received as his fee, an undivided interest in all property covered by the will, the attorney should withdraw from the case.

Canon 6.

QUESTIONS

1. Where any attorney has been counsel of record in a suit contesting a will, representing one of sixteen heirs, and such will, covering a minor part of the estate, has been admitted to probate, would it be proper for him to accept employment as attorney for a disinterested administrator who has been appointed to administer the residue estate when it appears that there may be questions arising for decision by the administrator which will involve a conflict of interest between the one heir represented by him and the remaining heirs?

2. In the event that such employment is or has been accepted and a question arises concerning the interpretation of the will involving a controversial question as to whether or not assets of the residue estate not included under the will should be sold to pay a bequest that may be either of all money on deposit in a specific bank account or of a specified sum of money, and the attorney who represented the heir in the will contest received as his compensation for such representation an undivided interest in all property covered by such will, would it be proper for such an attorney to:

- (a) Advise the administrator concerning payment of such bequest?
- (b) Advise the administrator to go ahead and pay the minimum amount which would be, in any event, due under such bequest?
- (c) Represent the administrator in an application requesting an order of the probate court to pay the minimum amount?

OPINION

It is the unanimous opinion of the committee that the answer to each of the above questions should be "No" under Canon 6 which deals with the subject of Adverse Influences and Conflicting Interests. As to the first question, the attorney should not accept employment, and as to the second group of questions, if the situation outlined should arise after employment, such attorney should immediately withdraw from the case. (10-0)