QUESTION

In 1960-61 an attorney originally represented the wife when she secured a divorce and order for child support, Subsequently, in 1963-64 while there was no apparent dispute with his former wife, the attorney was retained by the husband for whom he secured a discharge in bankruptcy. In 1966 the former wife, having returned to her native Germany and knowing no other lawyers locally, requested that the attorney endeavor to secure delinquent child support payments from her former husband, who is now being represented by another attorney.

OPINION

Would it be ethically proper for an attorney to represent a former wife seeking delinquent child support payments if he had previously represented the husband in a matter involving his financial affairs?

OPINION

Canon 37, entitled Confidences of a Client, provides that "It is the duty of a lawyer to preserve his client's confidences. This duty outlasts the lawyer's employment. . .(who shouldn't) accept employment which involves or may involve the disclosure of these confidences. . . to the disadvantage of the client, without his knowledge or consent. ."

Clearly, the attorney was informed in the bankruptcy proceedings of financial and other information which could be utilized to the detriment and disadvantage of the former husband-client.

The lawyer in these circumstances should decline the employment unless he secures the consent of the former husband-client. (See also ABA opinion 150, 163; N.Y. City 98.)

There would be no impropriety in aiding the former wife to retain local counsel, giving her the names and addresses of the local legal referral service, if any, or the name and address of several other attorneys who are known to engage extensively in similar matters.

Opinion # 55- 3/31/67 (5-67)

Topic: Conflict of Interest. Friendship Between District Attorney and Judge.

Digest: Not improper for friendly relationship to develop between Court and prosecutor so long as impartial decisions can be rendered.

Canon: Former Canon 3
Judicial Canons 5, 13, 26, 33

QUESTION

May District Attorneys or Assistant District Attorneys ethically practice before Justices of the Peace where they try cases of all types of offenses and misdemeanors and become very friendly with the Justice of the Peace?

OPINION

Several problems are presented here and we shall discuss them one at a time:

1. Canon 33 of the Canons of Judicial Ethics provides that "It is not necessary to the proper performance of judicial duty that a Judge should live in retirement or seclusion; it is desirable that, so far as reasonable attention to the completion of his work will permit, he continue to mingle in social intercourse, and that he should not discontinue his interest in or appearance at meetings of members of the Bar. He should, however, in pending or prospective litigation before him, be particularly careful to avoid such action as may reasonably tend to awaken the suspicion that his social or business relations or friendships constitute an element in influencing his judicial conduct". Canon 13 holds that a Judge "should not suffer his conduct to justify the impression that any person can improperly influence him or unduly enjoy his favor. . ." Canon 26 provides in part as follows: "It is desirable that he (a judge) should, so far as reasonably possible, refrain from all relations which would normally tend to arouse. . . the suspicion that such relations warp or bias his judgment, or prevent his impartial attitude of mind in the administration of his judicial duties."

2. Canon 3 of the Canons of Professional Ethics provides in part that "marked attention and unusual hospitablity on the part of a lawyer to a Judge, uncalled for by the personal relations of the parties, subject both the Judge and the lawyer to misconstructions of motive and should be avoided. . . A self-respecting independence in the discharge of professional duty, without denial or diminution of the courtesy and respect due the Judge's station, is the only proper foundation for cordial personal and official relations between Bench and Bar."

Section 14 of the Judiciary Law sets forth the instances when a Judge must disqualify himself from sitting in a case. "A Judge shall not sit as such in, or take part in any decision of, an action. . . in which he is interested." It has been held by the highest court in this State (Matter of Hancock's Will, 91 N.Y.284), that this interest must be an interest in a pecuniary or property right, and one from which the Judge might profit or lose. The Courts have several times held that in the absence of express statutory provisions bias, prejudice or unworthy motives on the part of a Judge unconnected with an interest in the controversy, are not grounds for compulsory disqualification. (People v. Owen 1954, 205 Misc.415, 128 N.Y.S.2nd 602.)

It would appear from the above authorities that the area here covered is one in which there is no black and white; each situation must be judged according to the circumstances. However, although friendship, bias and prejudice are not grounds for compulsory disqualifications pursuant to Sec 14 of the Judiciary Law, the Judge must keep in mind the fact that there should not be the slightest impression in his mind or the mind of any other individual, that the Court's decision might be swayed by anything other than the merits of the case.

William E. J. Conn[illegible] Justice, of the Columbia County Court, very nicely summed the probl[illegible] up in People of the State of New York v. McDonald 8 Misc.2nd 50, 167 N.Y.S.2nd 394, 396: "The question of when a Judge should disqualify himself is generally one of conscience. Some Judges disqualify themselves only when in their own mind their connection with the case is such that they feel they cannot be fair and unbiased. The practice which impresses me is that a Judge should disqualify himself whenever there might be the slightest impression upon the part of a litigant that his decision might be swayed by his connection with the case or his interest in the case, for it is important in the administration of justice not only that our Courts be presided over by Judges who are fair and impartial, but it appears to this Court that it is equally as important that litigants believe that they are being tried by a Judge who is fair and impartial and not influenced by any personal interest in the case". The responsibility is on the Judge not to sit voluntarily in a case unless he is both free from bias and from the appearance thereof.

It is, therefore, the opinion of this Committee that there is no reason why a District Attorney or Assistant District Attorney may not practice before a Justice of the Peace or a Judge of any Court merely because of a friendly or cordial relationship between the Court and Counsel. If this were not the case, there would be very few Judges able to sit on the Bench. However, when the relationship becomes such that the Court cannot render an impartial decision as required by Canons 5, 13, 26 and 33 of the Canons of Judicial Ethics, the Judge should voluntarily disqualify himself so as to avoid any chance or thought or suspicion of impropriety or influence.

Of course, it would not be proper for the District Attorney or Assistant District Attorney to represent a defendant being prosecuted by his office.

Opinion #56 - 3/31/67 (9-67)

Topic: Intermediary.

Digest: Lawyer may not be retained by corporation to represent third party chiropractors.

Canon: Former Canon 35

QUESTION

A corporation is engaged in handling personal injury and malpractice claims for chiropractors, receiving retainers from the chiropractors for which the corporation arranges for defense, adjustment and payment of the claims. The service is not provided as an incident to insurance coverage. A lawyer has been asked to defend some of these cases and asks whether it is proper for him to be retained by the corporation rather than by the chiropractor who is the defendant. He also asks whether the answer would be different if he handled only trial preparation or trial, and left settlement negotiations and payment to the corporation or the chiropractor himself.