

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

Opinion #79 - 6/6/68 (12-68)

Topic: JUDGES - RELATIONSHIP WITH
RELATIVES AND FORMER PARTNERS.
Digest: JUDICIAL ETHICS - JUDGES -
AVOIDANCE OF IMPROPRIETY IN
RELATIONSHIP WITH RELATIVES
AND FORMER PARTNER.
Canons: Judicial Ethics 4, 13, 26, 29

A judge asks three questions.

QUESTION NO. 1

May he continue to designate legal advertising in a local newspaper in which his son and son-in-law have or acquire a substantial ownership interest?

OPINION

The Canons of Judicial Ethics take a strong position to the effect that a judge's official conduct should not only be free from impropriety but also the appearance of impropriety. Canons 4 and 13 of the Canons of Judicial Ethics are applicable. Canon 13 states that a judge "should not suffer his conduct to justify the impression that....he is affected by the kinship, rank, position or influence of any party or other person." It is the opinion of the Committee that where a choice of newspapers exists, it is improper for a judge to order publication of legal notices in a newspaper in which members of his immediate family are substantial stockholders.

QUESTION NO. 2

The judge's son and son-in-law are both attorneys in separate firms. May the judge sign orders to show cause for the firms in which his son and son-in-law are partners?

OPINION

Several bar associations have taken the position that it is judicially improper for a judge to preside over a trial where near relatives, such as a son, is the attorney or trial counsel. (ABA 200, N.Y.City 456, N.Y.County 346. See also Canons 13 and 26 of Canons of Judicial Ethics; Drinker, Legal Ethic 72).

It would seem that the basis of these opinions is that the judge should avoid situations which could give the impression that his decisions are influenced by favoritism. The same reasoning could be applied to the signing of ex parte orders for an attorney who is a near relative.

It is, therefore, the opinion of the Committee that in the absence of extraordinary circumstances, it would be improper for a judge to sign orders to show cause for a firm in which his son or son-in-law is a partner.

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QUESTION NO. 3

A town attorney was a former partner and associate of the judge for more than 20 years prior to his ascent to the bench.

May the judge now grant "Stays" in matters in which this attorney is counsel for the firm?

OPINION

Apparently there is no generally accepted rule which would preclude a judge from sitting in a case merely because his former firm is counsel in such case. (Drinker, Legal Ethics 72, ABA Inf. 594.)

However, a judge has the obligation to avoid the appearance of impropriety. Each judge, therefore, should decide for himself whether under the circumstances he should in conscience accept cases involving a former partner.

It is the opinion of the Committee that he is not under an absolute obligation to disqualify himself under these circumstances.

Topic: GROUP LEGAL SERVICE PROGRAMS.
Digest: VALIDITY OF GROUP LEGAL SERVICE PROGRAM TO HANDLE GRIEVANCE CLAIMS OF DISSIDENT UNION MEMBERS.

Opinion #80 - 6/6/68 (25-67a)

Modified by 416

Canons: Former Canons 27, 35, 47

QUESTION

Dissident members of a union propose to organize a legal service program for the sole purpose of providing for the efficient handling of grievance claims on behalf of participating members. Grievance claims would include both complaints against employers where the member was dissatisfied with his union's handling of the matter, and complaints against the union. Claims against employers would relate to such matters as wages, working conditions, benefits, and lay-offs. Claims against the union would relate to alleged failures by the union to handle adequately grievance claims on behalf of members, or refusals by the union to permit members to vote or run for office.

The Committee is asked whether a lawyer may ethically participate in either of two alternative plans for the handling of such grievances. The first plan would involve the establishment of a referral service which would maintain a list of recommended lawyers, and would charge members a fee for each referral. The fees of the participating lawyers would be paid directly by the member whose case he handles. Under the alternative plan, all participating members would pay dues to the legal service organization, which would employ a single lawyer on a salary basis to handle all grievance matters covered by the plan.