

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

Section 471 of the Judiciary Law provides in part that, "a law partner of, or a person connected in the law business with a judge shall not practice or act as an attorney or counselor, in a court of which the judge is, or is entitled to act as a member..."

This section requires an attorney to decline employment, where his law partner acts as a justice of a court in which the litigation would be pending. The assistant district attorney could therefore not prosecute a case in this village court.

The district attorney's office is comparable to a legal partnership. Such a partnership, through the particular assistant district attorney, is (indirectly) associated with the judge of the village court. The district attorney and his assistants are therefore ethically prohibited from prosecuting any criminal case before this village court.

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..."

A judge must be circumspect in his relationship with the public at large; it is incumbent upon him to create the appearance of impartiality and fairness. If there is any question that a relationship may render an opinion partial, thereby violating canons 4, 5, 13, 26, and 33 of the Canons of Judicial Ethics the judge should voluntarily disqualify himself to avoid any chance of thought or suspicion of impropriety or influence.

Any doubt as to the relationship between counsel and the bench must be resolved in favor of the public at large.

Opinion #119 - 10/30/69 (19-69)

Topic: Newspaper stories
Digest: Acquiescence in newspaper
comments concerning
attorney's activities
Canons: Former Canon 27.
Code of Professional
Responsibility (effective
Jan. 1, 1970) - DR 2-101(A)

QUESTION

After a large real estate transaction has been completed, may the attorney for the seller consent to the publication of a newspaper article together with a picture of himself and various principals with a story concerning the transaction?

OPINION

Canon 27 states in part that:

"...Indirect advertisements for professional employment such as furnishing or inspiring newspaper comments, or procuring his photograph to be published in connection with causes in which the lawyer has been or is engaged or concerning the manner of their conduct, the magnitude of the interest involved, the importance of the lawyer's position, and all otherlike self-

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laudation, offend the traditions and lower the tone of our profession and are reprehensible;..."

In Matter of Connelly, 18 A.D.2d 466, 240 N.Y.S.2d. 126 (1st Dept. 1963) the Court stated:

"There can be no justification for the participation and acquiescence by an attorney in the development and publication of an article which, on its face, plainly amounts to a self-interest and unethical presentation of his achievements and capabilities."

This Court further stated:

"...The propriety of a lawyer's conduct...is to be judged on the basis of the nature and wording of the particular article, the occasion for and media of publication, and the nature and extent of his participation in the publication by the furnishing of material therefore, or otherwise..."

And

"What is wrong is for the lawyer to augment by artificial stimulus, the publicity normally resulting from what he does, seeing to it that his successes are broadcast and magnified."

The Code of Professional Responsibility states:

DR 2-101 Publicity in General

(A) A lawyer shall not prepare, cause to be prepared, use, or participate in the use, of any form of public communication that contains professionally self-laudatory statements calculated to attract lay clients; as used herein, "public communication" includes, but is not limited to, communication by means of television, radio, motion picture, newspaper, magazine, or book.

However, within the limits of the canons, a lawyer's consent to the inclusion of his name and his appearance in a group picture in a news story would not be a violation of the canons provided the publicity is incidental to a current news story and the lawyer in no way solicited or promoted the story.

Opinion #120 - 10/30/69 (24-69)

Topic: Billing practices
Digest: Attorney should bill client for whom specific services were performed.

QUESTION

An attorney is retained by a building contractor to obtain a zoning variance. The client had engaged a subcontractor to do part of the work and the subcontractor's agreement provided that he would pay