

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

Opinion #132 - 4/9/70 (11-70) Topic: Conflict of interest;
Appearance of impropriety;
Public employees

Digest: Improper for a lawyer leaving
public employment to accept
employment in connection with
a matter over which he had
substantial responsibility
while in office

Code*: Canon 9
EC 9-3
DR 9-101 (B)

QUESTION

An attorney as county attorney defended a County Board of Supervisors in a reapportionment case. In the course of such defense, he submitted a weighted voting plan on behalf of such County Board which was then approved by the court. The attorney has now been asked to represent petitioners who desire to bring a new proceeding against the Board of Supervisors to set aside the weighted voting plan which had been successfully advocated by the attorney. Can the attorney ethically represent the petitioners in the action against the supervisors?

OPINION

In the opinion of the Committee the answer is no. Canon 9 of the Code of Professional Responsibility states that a lawyer should avoid even the appearance of professional impropriety.

EC 9-3 states that after a lawyer leaves public employment he should not accept employment in connection with any matter in which he had substantial responsibility prior to his leaving, since to accept employment would give the appearance of impropriety even if none exists. See N.Y. State 52 (1967).

Opinion #133 -- 4/9/70 (12-70) Topic: Financing litigation;
Loans to clients;
Endorsing client's notes.

Digest: Improper to loan or
advance funds to client;
exceptions thereo.

Code*: DR 5-103 (B)
EC 5-8

QUESTION

May an attorney representing a claimant in a negligence case assist the client financially during the pendency of the litigation by either personal loans or endorsing or guaranteeing the note of the client at a lending institution?

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

OPINION

EC 5-8 provides as follows:

"A financial interest in the outcome of litigation also results if monetary advances are made by the lawyer to his client. Although this assistance generally is not encouraged, there are instances when it is not improper to make loans to a client. For example, the advancing or guaranteeing of payment of the costs and expenses of litigation by a lawyer may be the only way a client can enforce his cause of action, but the ultimate liability for such costs and expenses must be that of the client."

DR 5-103 (B) provides:

"While representing a client in connection with contemplated or pending litigation, a lawyer shall not advance or guarantee financial assistance to his client, except that a lawyer may advance or guarantee the expenses of litigation, including court costs, expenses of investigation, expenses of medical examination, and costs of obtaining and presenting evidence, provided the client remains ultimately liable for such expenses."

It is the opinion of this Committee that a lawyer may neither loan money or guarantee the notes of a negligence client except for those purposes specifically authorized by DR 5-103 (B).

Opinion #134 - 4/9/70 (13-70)

Topic: Fee splitting;
Sharing fees;
Forwarding fees.

Digest: Proper to share a fee with another lawyer provided (1) client knows and consents; (2) division is in proportion to work performed and responsibility assumed; and (3) total fee is reasonable.

Code*: EC 2-22
DR 2-107 (A)

QUESTION

An Ohio lawyer has a client who is a New York resident. After making a preliminary investigation with respect to a matter, the Ohio lawyer referred his client to a New York lawyer. Is it proper for the New York lawyer to divide his fee with the Ohio attorney?