

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinions

Opinion #186 - 4/28/71 (2-71)

Topic: Judicial Candidates
Campaign Expenses.

Digest: Not improper to make reasonable contribution to judicial candidates campaign committee.

Code*: EC 9-6
DR 9-101 (C)
Canons of Jud.Ethics 30, 32.

QUESTION

May a lawyer make a contribution to a judicial candidate's campaign fund?

OPINION

The propriety of a contribution to a judicial candidate's campaign fund depends upon all the attendant circumstances. A lawyer must refrain from making contributions that might justify the inference that the contribution is a device or attempt to gain from a judge special personal consideration or favor. N.Y. County 304.

It is not improper for a lawyer to contribute to a judicial candidate's campaign fund provided (a) the contribution is reasonable in amount; (b) the contribution is made to a campaign committee rather than to the candidate personally; and (c) he is assured that the identity of the contributors is not disclosed to the candidate. See ABA 226 (1941); N.Y. State 94 (1968). Disclosure to the candidate of the identity of contributors may create the impression that if elected he may administer his office with bias, partiality or improper discrimination.

Candidates for judicial office, as well as lawyers in general, have a duty to avoid the appearance of impropriety. EC 9-6; DR 9-101(C). See also Canons of Judicial Ethics 30, 32. In connection with support by lawyers of judicial candidates in general see N.Y. State 11 (1965); N.Y. State 12 (1965).

Opinion #187 - 4/28/71 (15-71)

Topic: Withdrawal from Employment.

Digest: Mere nonpayment of additional retainer does not justify withdrawal from matter pending before the Court, without the Court's permission.

Code*: DR 2-110(A)(2) and (C)(1)(f)
EC 2-32.

QUESTION

Is it proper for a lawyer, without the Court's permission or his client's consent, to withdraw from representation of his client and to refuse to attend at the trial unless he is paid further retainers.

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OPINION

Such conduct would be improper. A lawyer who assumes representation of a client in a civil or criminal case may withdraw only on the basis of compelling circumstances. EC 2-32. When a matter is pending before a tribunal the proper procedure is for the lawyer to request the Court's permission to withdraw. N.Y. State 178 (1971). Such permission may properly be requested when a client "deliberately disregards an agreement or obligation to the lawyer as to expenses or fees." DR 2-110 (C)(1)(f). Where there is no agreement as to the amount of compensation or the time for the payment, it cannot be said that the client "deliberately disregards an agreement or obligation" In any case where withdrawal is permitted the lawyer should comply with the requirements of DR 2-110 (A)(2), which provides that:

"(2) In any event, a lawyer shall not withdraw from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of his client, including giving due notice to his client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules."

Opinion #188 - 4/28/71 (14-71)

Topic: Solicitation of Clients.

Digest: Calling attention of clients to the passage of time since execution of Wills and possible need of redraft is not improper.

Code*: DR 2-104 (A)(1)
EC 2-1; 2-3; 2-4.

QUESTION

May an attorney notify each client for whom he has drawn a will that the will is five years old and recommend that it be reviewed?

OPINION

This Committee concurs with ABA 210 (1941) which states in part:

"Many events transpire between the date of making the will and the death of the testator. The legal significance of such occurrences are often of serious consequence, of which the testator may not be aware, and so the importance of calling the attention of the testator thereto is manifest.

"It is our opinion that where the lawyer has no reason to believe that he has been supplanted by another lawyer, it is not only his right, but it might even be his duty to advise his client of any change of fact or law which might defeat the client's testamentary purpose as expressed in the will.