

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

seeking to foment the bringing of such an action by members of the community at large.

It is felt that the lawyer also violated Canon 27 by allowing newspaper articles to be published which indirectly advertised the professional services of the lawyer and his firm. See, e.g., Matter of Connelly, 18 A.D. 2d 462 (1st Dept. 1963); American Bar Association Ethics Committee Opinion 140, unreported Opinion 79. It is recognized that the press and public have a proper and legitimate interest in newsworthy incidents in the career and activities of a lawyer. Matter of Connelly, *supra*, at 478. However, it is the duty of a lawyer to discourage the publication of an article he knew in advance might be construed as advertising, and he should give no aid in its preparation. Ibid. Any other conduct is derogatory to the dignity and self-respect of the profession and tends to commercialize the profession and bring it into disrepute.

The articles in question cannot be justified as the reporting of "newsworthy incidents" concerning the lawyer. The nature of the articles leaves no doubt that they were actively encouraged by the lawyer; and the lawyer allowed himself to be widely represented to the public as a public benefactor with regard to what the lawyer was quoted as calling "a matter of public service". This attempt by the lawyer to endear himself to the public of his locality constitutes, or would inevitably result in, solicitation of professional employment and is in direct contravention of Canon 27.

The opinion herein expressed does not pass on the legal question of reapportionment, it being the view of the Committee that the validity of the proposed reapportionment action was immaterial to the ethics of the conduct involved.

Opinion #8 - 1/29/65 (8-64)

Topic: Conflict of Interest.
Minimum Fee Schedule.
Representing Mortgagor and
Mortgagee.

Digest: Under certain circumstances,
lawyer may properly charge less
than minimum fee and may
represent both buyer mortgagor and
mortgagee lending institution.

Canons: Former Canons 6, 7, 12

QUESTION

A prospective buyer of real property obtains a mortgage from a lending institution and the attorney representing the mortgagee lending institution also represented the prospective purchaser. In so representing both the lending institution and the prospective purchaser, he charged the prospective purchaser a fee less than the minimum fee prescribed by the local County Bar Association. When questioned about this, the bank attorney stated the reason he charged less than the minimum to the prospective buyer was the fact that he, as bank attorney, was receiving the minimum fee from the bank for the title examination and for representing the bank.

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In short, the problem is, is it ethical for an attorney to represent a buyer mortgagor and the mortgagee lending institution in the same transaction; and furthermore; what are the ethical aspects of an attorney's cutting the schedule of minimum fees?

OPINION

Since the facts are silent in several specific areas, our opinion must make certain assumptions. We assume (a) that the prospective purchaser was under no compulsion or requirement to utilize the services of the bank's attorney; (b) that the proposed fee is not in fact considered excessive; (c) that said proposed fee has not been dictated by the bank but was established by the bank's attorney; (d) that in handling the proposed transaction, the bank's attorney has fully disclosed his relationship with the bank to the prospective purchaser; and (e) that in fact the interest of the bank and the prospective purchaser are not adverse to each other. (See Opinions of The Association of the Bar 131, 141, 363.)

Also, we may assume that no problem is involved indicating the bank's attorney to have improperly superseded the regular attorney of the prospective purchaser. (See Canons 6 and 7 of the New York Bar Association; Drinker, Legal Ethics, pages 190-191.)

Absent the foregoing, it is the opinion of a majority of this Committee that under the facts presented, it is proper for:

(a) the same attorney to represent both buyer-mortgagor and mortgagee lending institution in the same transaction. (Canon 6 New York State Bar Association Code of Ethics; Drinker, Legal Ethics, p. 121); and

(b) the attorney to depart from the fees established in a schedule of minimum fees. In this connection, said attorney should, under all circumstances, be guided by Canon 12 which sets forth the factors to be considered in fixing fees. Minimum fee schedules are guidelines but not a mandate and in this connection, this Committee reaffirms the opinion of the Committee on Professional Ethics of the New York State Bar Association, Opinion 5-64. (See also Canon 12, sub-paragraph 3; Drinker, Professional Ethics, pages 173 and 175.)

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