

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

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.

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

Modified by 416

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

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.

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OPINION

The general principles governing approval of lawyer participation in group legal service programs are set forth in our Opinion #76. Both of the proposed plans appear to be consonant with the decisions of the United States Supreme Court in United Mine Workers v. Illinois State Bar Association, 389 U.S. 217 (1967); Railroad Trainmen v. Virginia State Bar Association, 377 U.S. 1 (1964); and NAACP v. Button, 371 U.S. 415 (1963). Plans organized by dissident union members limited to the handling of grievance claims of such members do not appear to be distinguishable under these cases from plans organized by a union to prosecute workmen's compensation claims or other personal injury claims arising out of employment.

Of course, lawyers accepting referrals and employment under any such group service program must comply with all professional standards and canons which do not interfere with constitutionally guaranteed rights. Thus a lawyer would not be justified in financing such a program, either directly or indirectly. He could not solicit union members either to join the plan or to refer grievance matters to him. The program must be organized and operated so as to avoid problems of conflict of interest. There must also be adequate assurance that the plan will impair neither the lawyer's independence of professional judgment nor his obligation of undivided fidelity to each individual client.

Opinion #81 - 6/6/68 (16-68)

Modified by 106
Modified by 403

Topic: DIRECTORY LISTINGS
Digest: TELEPHONE AND CITY DIRECTORY LISTINGS

Canon: Former Canon 27

QUESTION

The Committee has received a request for amplification of "Professional Ethic-et #3" on Listings in Directories as published in the February 1968 issue of the New York State Bar Newsletter. Accordingly, the Committee states as follows:

OPINION

Although the listing of a lawyer's name in a classified directory is a form of advertising, the balancing of public interest against incidental publicity permits such listing. The following requirements indicate certain safeguards which must be observed to keep directory listings within the ethical bounds of Canons 27:

A. Telephone Directories

1. The listing must be under the general heading of "Lawyers" or "Attorneys-at-Law"