# NEW YORK STATE BAR ASSOCIATION Professional Ethics Committee Opinion

recapture the loan in the event that the client fails to pay the loan before the bank brings suit thereon, thereby entitling the attorney to determine whether or not to proceed to sue. In such case, of course, the attorney would be required to pay to the bank whatever might be due if in fact he wishes to proceed directly against the client.

Further safeguards under a permissible plan would include, but not be limited to the following: The contract with the bank should provide that neither the attorney nor the client would be compelled to divulge the nature of the services rendered; that arbitration before a Bar Committee be provided in order to protect the client against an improper fee; that the client still retains the right to take his case to court if he choses not to arbitrate; that the bank and its transferees agree not to raise the defense of a holder in due course; that if the client is successful in court the attorney is bound to make good the award of the court in favor of the client; that the bank and the attorney agree that the client may raise against the holder in an action to collect an obligation, all defenses which the client might have had against the attorney. (See Maine Bar Bulletin May 1968, p. 16 for discussion of ABA Ethics Committee approval of Legal Services Financing Plans, citing detailed discussion in "The Practical Lawyer", March 1968, p. 14; New York Law Journal, October 21, 1967,

However, a fair reading of the plan under review, including the Affiliation Agreement as amended, leads one to the conclusion that this plan is principally suitable for and intended to be used in connection with the sale of goods. The plan does not contain the essentials we consider appropriate for payment or financing of professional services, guidelines for which are set forth in the above citations.

"Paying for Legal Services under Installment Plan" by Copal Mintz.)

It is the opinion of this Committee that the proposed action of the attorney would be unethical, as violative of Canon 35.

Topic: Practicing in partner's court
Opinion #118 - 10/30/69 (15-69)
Digest: Village police judge sitting
in judgement on criminal
matters where partner is

assistant District Attorney

Judicial Canons: 4, 5, 13, 26 and 33

#### QUESTION

A and B are partners in a law firm. A is the Village Judge. His partner is employed as an assistant district attorney in the county encompassing the village where A serves as police judge.

Is it ethical for A to sit in judgement on criminal matters while his law partner is employed as an assistant district attorney in said county?

#### OPINION

It is ethically improper for a village police judge to sit in judgement on criminal matters in a jurisdiction where his partner is an assistant district attorney.

# 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 partner-ship. 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-

### NEW YORK STATE BAR ASSOCIATION Professional Ethics Committee Opinion

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

In <u>Matter of Connelly</u>, 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