

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?