

NEW YORK STATE BAR ASSOCIATION
Committee on Professional Ethics

OPINION 699 – 1/23/98 (42-97)

Topic: Sale of law practice by newly-elected judge.

Digest: Purchase price of law practice of newly-elected judge may not be contingent upon future success of acquiring firm in attracting and retaining work from existing clients.

Code: DR 2-111

Code of Judicial Conduct: Canon 2; 4(D)(1)

QUESTION

May a newly-elected judge sell a law practice for a price that is contingent upon the amount of future fees collected from clients?

OPINION

A newly-elected judge has a varied law practice built up over many years with hundreds of clients. When the judge closes that practice, it will have no pending litigation matters.

The negotiations for the sale of the judge's practice have been conducted in strict accordance with the dictates of the recently-adopted DR 2-111. The prospective purchaser has offered to make a cash down payment on contract and to pay the judge 20% of any fees collected from the clients on the client list over the next five years. The judge has inquired as to the ethical propriety of the proposed sale transaction.

DR 2-111 is plainly applicable to a lawyer "retiring" from the practice of law to assume judicial office. Accordingly, the judge may sell the law practice, including good will, subject to the restrictions and other conditions set forth in DR 2-111.

The total proposed purchase price for the practice is contingent upon the amount of future fees earned by the purchasing firm from the existing clients of the firm and is thus dependent upon the acquiring firm's success in retaining the clients. While there is

no prohibition against a judge collecting legal fees which were earned before leaving practice, Advisory Committee on Judicial Ethics, Opinion 93-44, Vol. XI (April 29, 1993), the proposed arrangement would provide an inducement to the judge to assist the acquiring firm in retaining the favor of former clients after the seller assumes judicial office. Because that possibility could reasonably be inferred, the proposed compensation arrangement is proscribed by Canons 2 and 4 of the Code of Judicial Conduct (the "Code").

Canon 2 cautions a judge to avoid impropriety and the appearance of impropriety in all his or her activities, and further mandates a judge to act "at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Canon 4(D)(1) provides:

A judge shall not engage in financial and business dealings that (a) may reasonably be perceived to exploit the judge's judicial position or ... (c) involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.

A compensation arrangement that is contingent upon the acquiring firm's future success in attracting and retaining work from the former clients of a newly-elected judge runs afoul of the foregoing provisions of the Code.

CONCLUSION

A newly-elected judge may not sell a law practice for a price that is contingent upon the future success of the acquiring firm in attracting and retaining work from the judge's former clients.
