INDIANA STATE BAR ASSOCIATION

Opinions Of Legal Ethics Committee, 1967

Opinion No. 1 of 1967

Lawyer Not Forever Barred From
Taking Case Against A Former Client

The Committee was asked its opinion by an attorney whose present client wished to bring suit against a person who at one time had been a client of the attorney.

Mr. Henry S. Drinker, in his book Legal Ethics, at page 112, stated: "One may sue a former client if his representation is ended and the matter does not involve confidential communications." An attorney is not forever barred from suing a former client, so long as the present matter was not connected with, and did not arise out of, the former employment, and so long as there is no breach of confidential information obtained during the former attorney-client relationship.

INDIANA STATE BAR ASSOCIATION

Opinions Of Legal Ethics Committee, 1967

Opinion No. 2 of 1967

Upon Receipt of Fee From Client, Attorney Must Forward Forthwith Portion Owing to Co-Counsel

The Legal Ethics Committee was informed of instances in which there was considerable delay, after receipt of a fee from the client by principal counsel, to forward the appropriate portion thereof to co-counsel who acted as local counsel.

Unless otherwise agreed to by the two attorneys, a fee for services rendered by both attorneys must be shared with co-counsel as soon as it has been received, and an attorney does not have the right to use any part of such portion for any other purpose. The attorney receiving the funds from the client holds that portion belonging to co-counsel in trust for co-counsel and must treat it as any other trust funds. See Canons of Professional Ethics Nos. 34, 7, 12 and 22.

Opinion No. 3 of 1967

Judge as Candidate
For Nonjudicial Political Office

The Legal Ethics Committee of the Indiana State Bar Association has been requested to render an opinion in response to a question propounded by the Disciplinary Commission of the Indiana Supreme Court.

The question simply stated is: May a judge become an active candidate for an office other than a judicial office while holding a judicial position?

Judicial Canon 30 furnishes the answer to the foregoing inquiry. It provides in part as follows:

> "While holding a judicial position he (a judge) should not become an active candidate either at a party primary or at a general election for any office other than a judicial office. If a judge should decide to become a candidate for any office not judicial, he should resign in order that it cannot be said that he is using the power or prestige of his judicial position to promote his own candidacy or the success of his party."

In its Opinion 195 the American Bar Association's Committee on Professional Ethics, in commenting on that portion of Judicial Canon 30 quoted, stated:

> "No limitations or exceptions are expressed in this language, and we regard it as too plain and simple to admit of construction. No incumbent of a judicial office may properly become a candidate for an elective nonjudicial office without resigning his judicial office. . . . . There are no circumstances under which the incumbent of a judicial office can continue in that office, while a candidate for an elective nonjudicial office, without violating Canon 30. To hold otherwise would be to defeat the clearly expressed intent of the Canon."

The most recent expression by tha American Bar Association's Committee on Professional Ethics was in August of 1964, Opinion 312. Addressing itself to specific questions of political involvement of judges, the committee outlined some sixteen proscriptions, a portion of which we present as being pertinent to the question under consideration:

"1. He should not become an active promoter of the interests of one political party as against another, This applies to appointed judges and elected judges whether or not the nomination and election is partisan or nonpartisan and extends during the entire tenure as judge.

"5. He should avoid public endorsement of candidates for political office. This applies to all judges whether appointed or nominated and elected in a partisan or nonpartisan manner, and extends during the entire tenure as judge.

"9. He should not engage generally in partisan activities. This applies to all judges whether appointed or nominated and elected in a partisan or nonpartisan manner, and extends during the entire tenure as judge.

"13. He should not, while holding his judicial position, become an active candidate for either party at a primary or general election for an office other than a judicial office. This applies to all judges whether appointed or nominated and elected in a partisan or nonpartisan manner, and extends during the entire tenure as judge.

"14. If he decides to become such a candidate, he should resign. This applies to all judges whether appointed or nominated and elected in a partisan or nonpartisan manner, and extends during the entire tenure as a judge.

"15. He should refrain from all conduct which might tend to arouse reasonable suspicion that he is using the power or prestige of his judicial position to promote his candidacy or the success of his party. This applies to all judges whether appointed or nominated and elected in a partisan or nonpartisan manner, and extends during the entire tenure as judge.

"16. He should not permit others to do anything on his behalf which would reasonably lead to such a suspicion. This applies to all judges whether appointed or nominated and elected in a partisan or nonpartisan manner, and extends during the entire tenure as judge."

The Legal Ethics Committee of the Indiana State Bar Association endorses and approves in their entirety the cited opinions of the American Bar Association. The State Bar Ethics Committee concludes that any judge whether elected or appointed may not ethically become a candidate for nonjudicial office while continuing to hold his judicial office.

Opinion No. 4 of 1967

Limitations On Law Practice By Former Judge

An attorney has asked the Legal Ethics Committee whether he may represent the County Park and Recreation Board in condemnation proceedings which were filed while he was Judge of the Circuit Court.

As Judge, he had appointed the members of the Board who subsequently voted to condemn the property in question. After the condemnation suits were filed, he entered the order of appropriation and appointed the appraisers. He then ceased to be judge. In none of these cases did the defendant question the right of the Park and Recreation Board to condemn the real estate.

Under these circumstances, the Legal Ethics Committee is of the opinion that the attorney properly may represent the Park and Recreation Board in the condemnation litigation. Canon 36 of the Canons of Professional Ethics states, in part:

> "A lawyer should not accept employment as an advocate in any matter upon the merits of which he has previously acted in a judicial capacity" (Emphasis added).

In the instant cases the attorney, while Judge, performed only ministerial duties, and did not act in a judicial capacity on the merits.

Therefore, not having passed upon the merits in a judicial capacity, the attorney ethically may represent a party to the condemnation proceeding.

Opinion No. 5 of 1967

Establishment Of Branch Office By Law Firm In Another City Is Ethical

A law firm desiring to establish a branch office in another city within the state asked the Legal Ethics Committee whether it was ethical for a law firm to conduct business under the same name in more than one location.

Canon 33 of the Canons of Professional Ethics permits the establishment of law partnerships, with the following admonition:

> "In the selection and use of a firm name, no false, misleading, assumed or trade name should be used."

Formal Opinion No. 277 and Informal Opinion No. C-702 of the American Bar Association's Professional Ethics Committee held that a law partnership may have offices in more than one city. However, the arrangement must be a genuine partnership, and may not be merely an agreement by independent lawyers to share a limited type of litigation. Opinion No. 277 held that a so-called partnership between lawyers in different cities to handle only a special class of cases is not a genuine partnership contemplated by Canon 33, and therefore is unethical.

Also, in Opinion No. 106, the A.B.A. committee held that a group of lawyers may not hold themselves out as partners when no partnership actually exists.

Canon 33 also prohibits the formation of partnerships between lawyers and persons who are not members of the legal profession duly admitted to the practice of law.

Therefore, provided that the arrangement between the lawyers having offices in the separate cities is a genuine partnership encompassing all legal business transacted at both locations, and does not involve non-lawyers, the partnership may exist under the same name in more than one location.