INDIANA STATE BAR ASSOCIATION
LEGAL ETHICS SUBCOMMITTEE

OPINION NO. 1 of 1978

Lawyer Must Not Delay Obtaining Dissolution
Of Marriage Case Until Fee Paid In Full

The Subcommittee was asked by an attorney employed by a county Legal Aid Office about the ethical considerations of the practice of some domestic relations attorneys of refusing to finalize dissolutions, refusing to withdraw from dissolution cases, and refusing to turn over dissolution files to Legal Aid Offices or any other attorney retained by the client. This practice most often occurs when an attorney is representing the wife in a dissolution action and under one of the following three factual circumstances:

1. Where the wife has funds, income or independent means with which to pay her own attorney fees, but fails or refuses to pay.

2. Where the husband has property or income or means of paying the attorney fees and a provisional order has been obtained but where the husband has failed or refused to pay the attorney fees of the wife's attorney.

3. Where, after the institution of the action, it is discovered that the wife in indigent and the husband is or becomes uncollectible.

The first question asked by the Legal Aid attorney is:

> "Is an attorney ethically able to postpone completion of a case, specifically a dissolution, only because his/her fees have not been paid? If so, how long?"

Assuming that a contract of employment and a contract for fees have been entered into, and the client willfully fails to pay as provided in the contract, then Disciplinary Rule 7-101 is applicable.

Disciplinary Rule 7-101 (A) (2) provides:

> A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but he may withdraw as permitted under DR 2-110.

Disciplinary Rule 2-110 (C) (1) (f), Withdrawal from Employment, provides:

> Permissive withdrawal. His client deliberately disregards an agreement or obligation to the lawyer as to expenses or fees.

Thus, the attorney cannot postpone completion of a case just because his fees have not been paid, but should take steps to withdraw from the case under applicable court rules as soon as it is determined that his client willfully is not paying the fees.

The second question asked is:

> "Should the fact that the other party is supposed to pay the fees make a difference?"

If the contract of employment or the provisional order requires that the other party pay the fee, a different portion of Disciplinary Rule 7-101 should be considered by the lawyer.

Disciplinary Rule 7-101 (A) (1) provides:

> A lawyer shall not intentionally fail to seek the lawful objectives of his client through reasonable available means permitted by law and the Disciplinary Rules.

Thus, a lawyer should use due dilligence to represent his client and collect his fee from the opposing party, and ethically should not postpone the completion of the case because his fees have not been paid.

The third question asked by the Legal Aid attorney is:

> "Does the inability of either party to pay matter?"

and the fourth question asked is:

> "Does the first attorney have a duty to finish representation if the client is bonafide unable to pay attorney's fees because of circumstances that could not be anticipated at the beginning of the suit?"

These two questions will be answered together. Canon 7--"A Lawyer Should Represent a Client Zealously Within the Bounds of the Law" -- and Disciplinary Rule 7-101 come into play. Also Canon 2--"A Lawyer Should Assist the Legal Profession in Fulfilling Its Duty to Make Legal Counsel Available" -- and its Ethical Considerations and Disciplinary Rules come into play.

Disciplinary Rule 2-110 -- Withdrawal from Employment -- provides:

> (C) Permissive withdrawal.
>
> (5) His client knowingly and freely assents to termination of his employment.

An attorney who, after institution of an action, discovers that the dissolution client is bonafide unable to pay for services, is still ethically required to continue the representation of his client and finalize the action unless consent to termination of employment from his client is obtained.

Ethical Consideration 2-25 provides:

> Historically, the need for legal services of those unable to pay reasonable fees has been met in part by lawyers who donated their services or accepted court appointments on behalf of such individuals. The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. Every lawyer, regardless of professional prominence or professional workload, should find time to participate in serving the disadvantaged. The rendition of free legal services to those unable to pay reasonable fees continues to be an obligation of each lawyer, but the efforts of individual lawyers are often not enough to meet the need. Thus it has been necessary for the profession to institute additional programs to provide legal services. Accordingly, legal aid offices, lawyer referral services, and other related programs have been developed, and others will be developed, by the profession. Every lawyer should support all proper efforts to meet this need for legal services.

Also, Ethical Consideration 2-31 provides:

> Full availability of legal counsel requires both that persons be able to obtain counsel and that lawyers who undertake representation complete the work involved. . .

Ethical Consideration 2-32 also provides:

> A decision by a lawyer to withdraw should be made only on the basis of compelling circumstances, and in a matter pending before a tribunal he must comply with the rules of the tribunal regarding withdrawal. A lawyer should not withdraw without considering carefully and endeavoring to minimize the possible adverse effect on the rights of his client and the possibility of prejudice to his client as a result of his withdrawal. Even when he justifiably withdraws, a lawyer should protect the welfare of his client by giving due notice of his withdrawal, suggesting employment of other counsel, delivering to the client all papers and property to which the client is entitled, cooperating with counsel subsequently employed, and otherwise endeavoring to minimize the possibility of harm. Further, he should refund to the client any compensation not earned during the employment.

Indiana Opinion No. 5 of 1977 deals with the ethical considerations of a lawyer retaining a file because fees have not been paid and concludes that a lawyer may be ethically required to return a client's papers even though he may legally have a lien. The same opinion concludes that another lawyer may ethically accept

employment to continue a case even though the prior lawyer has not been paid.

Thus, in answer to questions 3 and 4, it is the opinion of the Subcommittee that it would be unethical for a lawyer not to complete a case for an indigent dissolution client upon that client's request.

It is also the opinion of the committee that it would be unethical for a lawyer not to deliver to the Legal Aid, or other attorney retained by the indigent dissolution client, all papers and property to which the client is entitled.

INDIANA STATE BAR ASSOCIATION
LEGAL ETHICS SUBCOMMITTEE

OPINION NO. 2 of 1978

REPRESENTATION OF A FINANCIAL INSTITUTION AGAINST FORMER CLIENT-CONFLICT OF INTEREST AND CLIENT CONFIDENCES

The Legal Ethics Subcommittee of the Indiana State Bar Association has been presented with the following facts and question:

> The ABC Corporation, since the time of its incorporation, has been represented by a law firm through Attorney X of such firm. Such corporation has outstanding loans from the First Bank, which bank is represented by the same law firm through Attorney X. The ABC Corporation commenced to experience financial problems, and in the course thereof assumed an adversary position to the First Bank regarding its outstanding loans. As the ABC Corporation was informed that the law firm represents the First Bank on a retainer basis, it sought other counsel to represent it in its dispute with such bank. Attorney X, in the course of the representation of such corporation, was privy to corporate history and to information concerning its financial position.
>
> Does the law firm have a conflict of interest in continuing to represent the First Bank against the ABC Corporation through Attorney Y, assuming that Attorney X will not be called as a witness?

The difficulty of continuing to represent the Bank in an adversary position against the firm's corporate client, from which it obtained confidential information, is readily apparent. Canon 4 of the Code of Professional Responsibility of the State of Indiana provides as follows:

> "A lawyer should preserve the confidences and secrets of a client."

EC 4-5 provides as follows:

> "Care should be exercised by a lawyer to prevent the disclosure of the confidences and secrets of one client to another, and no employment should be accepted that might require such disclosure." (ABA Canons 6 and 37)

Canon 9 of the Code of Professional Responsibility of the State of Indiana provides:

"A lawyer should avoid even the appearance of professional impropriety."

This Subcommittee earlier stated in Indiana Legal Ethics Opinion No. 5 of 1975:

"Professor Wise has expressed this strict standard in conflict situations in the following words:

". . . if there is the slightest doubt as to whether a proposed representation involves a conflict between two clients or between a new client and a former client or may encompass the use of special knowledge or information obtained through service of another client . . . the doubt can best be resolved by Matthew VI, 24: 'No man can serve two masters.'" (Wise, Legal Ethics, p. 256, 1970) (Emphasis added)

Canon 5 of the Code provides:

"A lawyer should exercise independent professional judgment on behalf of a client."

EC 5-14 provides:

"Maintaining the independence of professional judgment required of a lawyer precludes his acceptance or continuation of employment that will adversely affect his judgment on behalf of or dilute his loyalty to a client. This problem arises whenever a lawyer is asked to represent two or more clients who may have differing interests, whether such interests be conflicting, inconsistent, diverse, or otherwise discordant."

This Subcommittee, in its Opinion No. 2 of 1963, in passing upon a rather similar conflict of interest question, aptly stated as follows:

"It is the Opinion of the committee that the intent of Canon 7 of the Canons of Professional Ethics is to make certain to a client that the confidential information he gives his attorney will not be divulged and will never fall into the hands of an opposing interest. Canon 6 states:

"The obligation to represent the client with undivided fidelity and not to divulge his secrets or confidences forbids also the subsequent acceptance of retainers or employment from others in matters adversely affecting any interest of the client with respect to which confidence has been reposed.

"It is the opinion of the committee, that, regardless of whether an associate (or partner) of the law firm actively participated in the representation, or even was aware of it, it would be im-

> proper for the associate (or partner), upon leaving the firm, to represent the opposing party. It is, of course, axiomatic that it would be improper for different members of the same law firm to represent opposing sides of a controversy."

It is the opinion of the Subcommittee that the law firm cannot and should not undertake the representation of the Bank in its dispute with its former client, where members of such law firm were privy to information of such corporate client that even remotely have a bearing upon the Bank's claim against such client, thus it would be improper for the law firm to continue its representation of the Bank in such dispute, and it ought immediately withdraw from such representation.

INDIANA STATE BAR ASSOCIATION
LEGAL ETHICS SUBCOMMITTEE

OPINION NO. 3 of 1978

SPOUSE OF DEFENSE ATTORNEY EMPLOYED AS SECRETARY IN PROSECUTING ATTORNEY'S OFFICE AND SPOUSE OF JUDGE EMPLOYED AS SECRETARY IN FIRM REGULARLY APPEARING IN JUDGE'S COURT

This joint formal opinion concerns two requests for formal opinions submitted to the Legal Ethics Subcommittee of the Indiana State Bar Association. The first request (hereinafter "Defense Attorney Request") asks if it is proper for the wife of an Attorney, who is a member of a firm which does criminal defense work, to be employed as a Secretary in the Prosecutor's office in that same county and against which Prosecutor's office that firm will appear in criminal matters. The second request (hereinafter "Judge Request") asks if it is proper for the wife of a Judge of an Indiana Court of Record to work as a Secretary in a law firm which regularly appears before the Judge's Court. (The Judge was a partner in that same law firm before assuming his judgeship.)

Defense Attorney Request

A close examination of the Code of Professional Responsibility, ABA Formal Opinions and ISBA Formal Opinions reveals no language or opinion precisely on point relative to the Defense Attorney. However, the recognition of new problems and needs resulting from the increased pursuit of careers by both husbands and wives is reflected in ABA Formal Opinion 340 (1975). The facts in that case were that the husband and wife were both lawyers but were not practicing in association with one another. They wanted to know if they or their firms could represent differing interests. The ABA committee noted that this question, "in varying forms, has been presented to this Committee with some frequency recently." Formal Opinion 340, p. 1 (1975). The opinion further observed that another variation of this problem exists where "a district attorney or an attorney general, is the employer of either the husband or the wife, and the spouse is associated with a law firm in the same community." Recognizing that the problem undoubtedly will arise "with increasing frequency and in different settings," the committee concluded that, "It is not necessarily improper for husband-and-wife lawyers who are practicing in different offices or firms to represent differing interests." The committee went on to add that it is not unethical for a wife to represent the opposing party in negotiation or litigation. However, the committee did add the caveat that a lawyer whose husband or wife is a lawyer must obey the disciplinary rules without distinction to marriage. In so doing, the lawyer must be careful to observe the suggestions and requirements of the disciplinary rules and ethical considerations pertaining to impairment of independent professional judgment and preservation of clients' confidences. (To this list one might also add the appearance of

impropriety.) And in particular, said the committee, the marriage partner or partners who are lawyers must be careful to guard against "inadvertent violations of their professional responsibilities arising by reason of the marital relationship." [1]

The application of the ABA Committee's opinion to the instant matter leads one to conclude that it is not improper or unethical for the wife of an Attorney who is a member of a firm which practices criminal defense work to

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[1] Formal Opinion 340 paid special attention to the possibility of violation of DR 5-101 which states that a lawyer cannot accept employment if the exercise of his professional judgment on behalf of his client reasonably may be affected by his own financial, business, property, or personal interests. This may be done only with the consent of his client and after full disclosure. DR 5-101 (A). Cf., ABA, Canon VI and ABA Opinions 181 (1938), 104 (1934), 103 (1933), 72 (1932), 50 (1931), 49 (1931), and 33 (1931). The committee thus stated that:

> If the interest of one of the marriage partners as attorney for an opposing party creates a financial or personal interest that reasonably might affect the ability of a lawyer to represent fully his or her client with undivided loyalty and free exercise of professional judgment, the employment must be declined. Formal Opinion 340, p. 2.

Nevertheless, the committee concluded that every situation would not necessarily result in a violation of the disciplinary rule nor in the need for disqualification! Ibid. But in all circumstances, the committee concluded that the lawyer should advise the client of all relationships that might cause one to question the undivided loyalty of the law firm and let the client make the decision as to its employment. Finally, the committee concluded that this decision was consistent with views expressed by other committees in regard to close relationships. Those include Opinion 19 (January 23, 1963), Professional Ethics Committee of the Kansas Bar Association, and Opinion 48, Missouri Advisory Opinions, which have held that a father and son may represent opposite sides in litigation. They also include Opinion No. 170 (1970), New Jersey Advisory Committee on Professional Ethics, which held that it is not improper for a lawyer to represent an indigent when the lawyer's brother is employed by the prosecutor's office. The committee also noted the inconsistent holding of Opinion No. 288 (1974), New Jersey Advisory Committee on Professional Ethics, that a "wife should not be permitted to practice criminal defense law in New Jersey while her husband" is a deputy attorney general assigned to the Appellate Section of the Division of Criminal Justice. The committee neither expressly rejected nor accepted this last opinion but merely pointed to its existence. Given the thrust of ABA Formal Opinion 340 and the state opinions cited therein, it is reasonable to conclude that the change from a civil to a criminal setting alone does not justify a contrary ruling and that New Jersey Opinion No. 288 is seriously compromised if not yet expressly rejected.

be employed as a Secretary by a Prosecuting Attorney against whom the firm litigates criminal defense. Clearly there is less danger of ethical impropriety here because the spouse serving as a Secretary is not representing the opposing party, whether that party be an individual or the state. There is less danger that independent professional judgment will be impaired by the simple fact that the opposing attorney is not personally related to the Defense Attorney. Similarly, the preservation of confidences is easier. Where both spouses are lawyers, one need only inadvertently see a note pad or other work product left in view at home or in the office. The transmittal of the information and damage is instantaneous. In the present case, however, the Secretary wife would still have to convey the information to her employer. An in the reverse situation, the Secretary would not be as likely to bring home the work product or notes of the Prosecuting Attorney as would the Attorney himself. Finally, the general problem of the appearance of impropriety is lessened by the mere fact that the spouse serving as Secretary to the Prosecutor is not as visible to the public as the situation where the spouse is the actual attorney in question. And all of this should be viewed in light of a changing public attitude to employment of the wife outside the home. This very change is reflected in the increased occurrence of such cases before the Committee, alluded to in Formal Opinion 340. Ibid, p. 1. Considering all these facts, the best admonition to be given in this situation is for the Defense Attorney to advise the client of the relationship, let the client be the judge and avoid any impropriety or appearance of impropriety with the firm resolution to withdraw even if the appearance of impropriety does arise.

Judge Request

As in the case of the Defense Attorney, there is no Indiana or ABA opinion nor language in the Code of Judicial Conduct that precisely answers the question posed by the facts in the Judge Request. The Code of Judicial Conduct states that, "a judge should avoid impropriety and the appearance of impropriety in all his activities." Canon II. This Canon further states that a judge should respect and comply with the law and should conduct himself at all times in a manner which "promotes public confidence and the integrity and impartiality of the judiciary." Canon II (A). Furthermore, a judge should not allow his family, social, or other relationships to influence his judicial conduct or judgment. Canon II (B).

Canon III of the Code of Judicial Conduct states that the judicial duties of a judge take precedence over all his other activities. These judicial activities include all the duties of his office prescribed by law. That Canon states that in the performance of those duties, certain standards should apply. One of these pertains to disqualification of a judge. It states that a judge should disqualify himself in a proceeding in which his impartiality "might reasonably be questioned," including but not limited to, instances where he has a personal bias or prejudice concerning a party, he has served as a lawyer in the matter in controversy or was a member of a firm which served in that matter at that time, he knows that he or his spouse has a financial or other property interest in the matter in controversy which will be substantially affected by the outcome,

or that he or his spouse is a party to the proceeding, is acting as a lawyer in the proceeding, has an interest in the outcome, or is likely to be a material witness in the proceeding. Code of Judicial Conduct, Canon III (C) (1) (a), (b), (c), (d).

In the case of the Judge, his wife is neither a party to the litigation nor an attorney of record for a party involved in litigation before the Judge's court. Nor does the spouse of the Judge have a pecuniary interest in the outcome of the case, as the facts are presented herein. And in addition, the firm for which the spouse works and of which the Judge was a member is not appearing before the Judge's court in a matter which the firm worked on or appeared in as the facts are presented herein. Therefore, there is no inherent ethical impropriety in the wife of the Judge working in a law firm which regularly appears before the Judge and of which the Judge was once a member. [2]

The danger of the appearance of judicial impropriety is lessened by the fact that the Judge's wife is not serving as an attorney and member of the firm which is representing the party before the court. It would be unreasonable to question the impartiality of the Judge merely because his wife is a Secretary for a firm before his Court just as it would be unreasonable to question his impartiality merely because he was a past member of the firm. Absent some other factor which would tend to create the appearance of impropriety or interfere with the impartial image of the Court, there is no ethical problem or reason for disqualification by the Judge.

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[2] At common law a judge was under no ethical obligation to disqualify himself because of mere relationship to a party to a cause. 48 C.J.S. § 84. By force of constitutional or statutory provisions, however, relationship by affinity or consanquinity between the judge and a party litigant could disqualify the judge; although under some statutes a judge was disqualified only where he was convinced that his relationship to a party would sway his judgment. Ibid. Similarly, a judge was not disqualified at common law because of relationship to an attorney of record for one of the parties to a suit when the attorney had no pecuniary interest in the judgment, or where he merely appeared as an attorney of record without actively participating in the management of the case. 48 C.J.S. § 86. States may require disqualification where the fee is contingent. Ibid. And at common law it was held that a judge should disqualify himself where the facts are such that there is a natural inclination to pre-judge the case or where the antecedent events are such as may cause reasonable men to doubt the judge's impartiality or to feel that a fair and impartial trial could not be had. Ibid.

Conclusion

There is nothing inherently unethical in either the situation posed in the Defense Attorney Request or the Judge Request. In both situations, factors might arise which would contain questions of ethical impropriety. Thus in both situations the Attorney and/or Judge should give special attention to the ethical guidelines discussed infra. And in both cases the Attorney and/or Judge should divulge this fact to the client or the parties, respectively. But there is an increasing likelihood that both spouses will be working and working in law-related areas as lawyers, legal secretaries, or paralegals. And absent actual ethical impropriety, there is no reason to limit such activity on the mere chance that it may occur.

INDIANA STATE BAR ASSOCIATION
LEGAL ETHICS SUBCOMMITTEE

OPINION NO. 4 of 1978

LAWYERS IMPROPERLY HOLDING THEMSELVES OUT
AS PARTNERS IN AN OFFICE SHARING ARRANGEMENT

Inquiry was made of the Legal Ethics Subcommittee as to the ethical considerations involved in using a letterhead as follows:

F, G, H & I
Attorneys at Law

AF
BG
CH
DI
EF

when in fact none of the parties are partners and all that they actually do is share office space under a sublease arrangement wherein three of the attorneys sublease from Mr. AF and the name EF, wife of AF, also appears on the letterhead when in fact she does not actively practice law.

It is further understood that each lawyer is responsible for his own clientele, maintains his own books and pays his own expenses and reaps his own income and does not share income with the other lawyers. So that in fact there is absolutely no partnership arrangement between the attorneys involved in the use of the letterhead.

Disciplinary Rule 2-102 (C) of the Indiana Code of Professional Responsibility is applicable and provides as follows:

> "A lawyer shall not hold himself out as having a partnership with one or more lawyers unless they are in fact partners."

Ethical Consideration 2-13 amplifies this in the foregoing Disciplinary Rule as follows:

> "In order to avoid the possibility of misleading persons with whom he deals, a lawyer should be scrupulous in the representation of his professional status. He should not hold himself out as being a partner or associate of a law firm if he is not in fact, and thus, should not hold himself as a partner or associate if he only shares offices with another lawyer."

As there are no partnership arrangements among the attorneys and they do

nothing more than share office space or sublease from one of the attorneys, then, of course, there is no partnership. The Subcommittee is of the opinion that Ethical Consideration 2-13 and Disciplinary Rule 2-102 (C) control the matter.

By using the letterhead the general public can easily be mislead as to the existence of partnership, when in fact, none exists. Accordingly, the Subcommittee is of the opinion that the use of the letterhead would be unethical and violative of DR 2-102 (C). This conclusion is supported by numerous prior Indiana and ABA opinions. See Indiana Opinion No. 2 of 1972, as clarified by Indiana Opinion No. 3 of 1973; ABA Formal Opinions 106, 126 and 318; and ABA Informal Opinions 555 and 966. The Subcommittee is of the opinion that separate stationery should be used by each lawyer. Other areas of concern for each lawyer in such an office sharing arrangement extend, among other things, to separate listing of the individual lawyers names on any sign on the office premises; separate advertising and listing in any authorized media, such as the telephone directory; and separate telephones. See Indiana Opinion No. 3 of 1973 for further information regarding the foregoing minimum standards.

Finally, even assuming that a true partnership did exist among Messrs. AF, BG, CH and DI, the Subcommittee is of the opinion that the retention of Mrs. EF, spouse of AF, on the letterhead would be improper. EF is not engaged in the active practice of law. Under DR 2-102 (A) (4) authority for listing the names of individual lawyers on letterheads is limited to firm members, associates, lawyers in an "Of Counsel" status to the firm, and deceased or retired members of the firm.

INDIANA STATE BAR ASSOCIATION
LEGAL ETHICS SUBCOMMITTEE

OPINION NO. 5 of 1978

Part-Time Judge -- Conflicts

The Legal Ethics Subcommittee of the Indiana State Bar Association has been requested to issue its opinion on several matters involving part-time judges, their private practice of law and the private practice of their partners or associates. The questions to be considered by the Subcommittee are:

(1) Whether a part-time judge, or members or associates of the judge's firm, may represent governmental clients (e.g. school boards, county departments of public welfare) whose cases, brought on their behalf, are filed in the judge's court?

(2) Whether a part-time judge can appoint another attorney [partner or associate] in his law firm judge pro tem or to a special panel from which a special judge is selected?

(3) Whether part-time judge or members of the judge's firm can represent clients in other courts?

I. Representation of Governmental Clients

In most situations, the part-time judge is both a judge and a practicing attorney; and consequently, he is subject to both the Indiana Code of Judicial Conduct [I.C.J.C.] and the Indiana Code of Professional Responsibility [I.C.P.R.]. Under both the I.C.J.C. and the I.C.P.R., the part-time judge, his partners and associates are all prohibited from representing governmental clients (e.g. school boards, county departments of public welfare) whose cases, brought on their behalf, are filed in the judge's court.

It is clear that the part-time judge cannot practice in his own Court. Indiana Ethics Opinion No. 7 of 1964; Indiana Ethics Opinion No. 1 of 1974. Further, under the Indiana Code of Judicial Conduct, and in particular Canon 5 (C) (1), it is equally clear that a part-time judge may not represent governmental clients whose cases are frequently filed in the part-time judge's court. For to do so

would "tend to ... involve him [the judge] in frequent transactions with lawyers or persons likely to come before the court on which he serves." I.C.J.C. Canon 5 (C) (1).

With respect to the part-time judge's partners or associates, it is clear that under Indiana Ethics Opinion No. 2 of 1974 the judge's "partners and associates may not do what the judge himself is prohibited from doing." Consequently, the partners and associates of the judge may not represent governmental clients whose cases, brought on their behalf, are filed in the part-time judge's court. Further, one should note that the Indiana Code of Professional Responsibility DR 5-105 (D) which provides:

> "If a lawyer is required to decline employment or to withdraw from employment under DR 5-105, no partner or associate of his or his firm may accept or continue such employment."

Under analogous reasoning to DR 5-105 (D), the prohibition of the part-time judge representing governmental clients whose cases, brought on their behalf, are filed in the part-time judge's court would apply to the partners and associates of the judge's law firm.

A reading of Canon 9 [a lawyer should avoid even the appearance of professional impropriety] of the I.C.P.R., and in particular EC 9-1, 9-2 and 9-3, indicates that for a part-time judge to represent governmental clients whose cases, brought on their behalf, are filed in the part-time judge's court, would be violative of the Indiana Code of Professional Responsibility.

II. Appointment of Pro tem or Special Panel

Under the Indiana Code of Judicial Conduct a judge should "himself observe high standards of conduct so that the integrity and independence of the judiciary may be preserved." I.C.J.C. Canon 1. A judge must also "conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Canon 2A. Finally, a judge should not "convey or permit others to convey the impression that they are in a special position to influence him." Canon 2B. With these particular portions of the I.C.J.C. in mind, it is the opinion of the Legal Ethics Subcommittee that for a part-time judge to appoint an attorney (partner or associate) in his firm judge pro tem or to a special panel from which a special judge is selected would be violative of the Indiana Code of Judicial Conduct.

Under the Indiana Code of Professional Responsibility, the judge (who is also an attorney) "should avoid even the appearance of professional impropriety." I.C.P.R., Canon 9.

EC 9-1 and 9-2 provide:

> "Continuation of the American concept that we are to be governed by rules of law requires that the people have faith that justice can be obtained through our legal system. A lawyer should promote public confidence in our system and in the legal profession.
>
> "Public confidence in law and lawyers may be eroded by irresponsible or improper conduct of a lawyer. On occasion, ethical conduct of a lawyer may appear to laymen to be unethical. In order to avoid misunderstandings and hence to maintain confidence, a lawyer should fully and promptly inform his client of material developments in the matters being handled for the client. While a lawyer should guard against otherwise proper conduct that has a tendency to diminish public confidence in the legal system or in the legal profession, his duty to clients or to the public should never be subordinate merely because the full discharge of his obligation may be misunderstood or may tend to subject him or the legal profession to criticism. When explicit ethical guidance does not exist, a lawyer should determine his conduct by acting in a manner that promotes public confidence in the integrity and efficiency of the legal system and the legal profession."

Keeping in mind Canon 9, it is the opinion of the Legal Ethics Subcommittee that for a part-time judge, to appoint another lawyer from his firm judge pro tem or to a special panel from which a special judge is selected, would be violative of the Indiana Code of Professional Responsibility.

III. Representation in Other Courts

There is no doubt that the part-time judge and other attorneys in his firm are permitted to practice civil law in courts other than the part-time judge's. However, the judge and other attorneys in his law firm are prohibited from representing non-indigent criminal defendants in all courts in the Indiana and Federal judicial system. The reasons for this are valid and are set out in Indiana Ethics Opinion No. 1 of 1974.

EC 2-25, however, provides:

> "Historically, the need for legal services of those unable to pay reasonable fees has been met in part by lawyers who donated their services or accepted court appointments on behalf of such individuals. The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. Every lawyer,

> regardless of professional prominence or professional workload, should find time to participate in serving the disadvantaged. The rendition of free legal services to those unable to pay reasonable fees continues to be an obligation of each lawyer, but the efforts of individual lawyers are often not enough to meet the need. Thus, it has been necessary for the profession to institute additional programs to provide legal services. Accordingly, legal aid offices, lawyer referral services, and other related programs have been developed, and others will be developed, by the profession. Every lawyer should support all proper efforts to meet this need for legal services."

Therefore, it is the opinion of the Subcommittee that, in the spirit of EC 2-25, the part-time judge and members of his firm are permitted to represent indigent criminal defendants in a Court system outside the state judicial system, for example, the Federal District Court, by appointment. Such representation of criminal defendants is clearly a proper "involvement in the problems of the disadvantaged," is clearly in line with the goal that "every lawyer should support all proper efforts to meet this need for legal services," and is at the discretion of the Judge making the appointment.

INDIANA STATE BAR ASSOCIATION
LEGAL ETHICS SUBCOMMITTEE

OPINION NO. 6 of 1978

Prosecuting Attorneys and Deputies -- Conflicts

The Legal Ethics Subcommittee of the Indiana State Bar Association has been asked several questions with respect to full-time and part-time prosecuting attorneys and part-time deputy prosecuting attorneys:

(1) Whether full-time prosecuting attorneys can in their off-hours, engage in the private practice of law?

(2) Whether a part-time deputy prosecuting attorney can represent criminal defendants within the state judicial system?

(3) Whether a part-time deputy prosecutor or members of his firm can represent a defendant in an eminent domain prodeeding against the State?

(4) Whether a part-time prosecutor or deputy prosecutor or members of his firm may represent other governmental units?

I. Full-time Prosecuting Attorneys and Their Private Practice of Law

There is no question that prosecuting attorneys of judicial circuits of the first through the sixth classes who devote their full professional time to that office are prohibited from engaging in the private practice of law. See I.C. 33-14-7-19.5.

II. Part-time Deputy Prosecutor's Representation of Criminal Defendants Within the State Judicial System

The Subcommittee has previously stated that a part-time deputy prosecuting attorney may not represent criminal defendants within the state judicial system. Indiana Legal Ethics Opinion No. 1 of 1977. Opinion No. 1 of 1977 is hereby reaffirmed.

III. Part-time Deputy Prosecutor's Representation of a Defendant in an Eminent Domain Proceeding Against the State

A part-time deputy prosecuting attorney representing a defendant in an eminent domain proceeding against the State of Indiana is representing clients having "potentially differing interests." The prosecuting attorney and his deputies are members of the State Constitutional Judicial System and are representatives of the State of Indiana. See Indiana Legal Ethics Opinion No. 2 of 1972.

The State of Indiana has a differing, if not an adversary interest, in the proceeding from that of the eminent domain defendant. The ethical considerations are clear that a lawyer must carefully weigh the potential that his judgment may be impaired when requested to represent clients "having potentially differing interests." (EC 5-15 and 5-16) It is the opinion of the Legal Ethics Subcommittee that, before a part-time deputy prosecuting attorney represents a defendant in an eminent domain proceeding against the State of Indiana, the possible adverse effect on both the eminent domain defendant and the State of Indiana must be fully explained to both clients, and both clients must fully understand the situation. Also, meaningful consent must be obtained from both the State of Indiana and the eminent domain defendant. How to obtain "meaningful consent" is a question requiring a legal opinion which is outside the authority of the Subcommittee.

Further, "a lawyer should never represent in litigation multiple clients with differing interests." Thus, if the "potentially differing interests" become "actually differing," the part-time deputy prosecuting attorney could not represent such a defendant and remain in compliance with Canon 5 of the Indiana Code of Professional Responsibility, and in particular, DR 5-105.

IV. Part-time Prosecutor's Representation of Other Governmental Units

Finally, under Canon 5 of the Indiana Code of Professional Responsibility, part-time prosecuting or deputy prosecuting attorneys may represent other governmental units under the conditions stated below.

A part-time prosecuting or deputy prosecuting attorney is a legal representative of the State of Indiana. If such an attorney represented other governmental units (i.e., city, county and state), he would clearly be placing himself in the position of representing multiple clients "having potentially differing interests." It is possible for governmental units to have "differing interests" both in litigation and non-litigation related matters. The ethical considerations are clear that a lawyer must carefully weigh the potential that his judgment may be impaired when requested to represent clients "having potentially differing interests." (EC 5-15 and 5-16)

EC 5-16 provides:

> "In those instances in which a lawyer is justified in representing two or more clients having differing interests, it is nevertheless essential that each client be given the opportunity to evaluate his need for representation free of any potential conflict and to obtain other counsel if he so desires. Thus, before a lawyer may represent multiple clients, he should explain fully to each client the implications of the common representation and should accept or continue employment only if the clients consent. If there are present other circumstances that might cause any of the multiple clients to question the undivided loyalty of the lawyer, he should also advise all of the clients of those circumstances."

DR 5-105 (A) and (C) provide:

> "A lawyer shall decline proffered employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment, except to the extent permitted under DR 5-105 (C)."

> "In the situations covered by DR 5-105 (A) and (B), a lawyer may represent multiple clients if it is obvious that he can adequately represent the interest of each and if each consents to the representation after full disclosure of the possible effect of such representation on the exercise of his independent professional judgment on behalf of each."

Because this multiple representation situation arises with the presence of potentially differing interests, it is the opinion of the Legal Ethics Subcommittee that, before a part-time prosecuting or deputy prosecuting attorney represents any other governmental units, the possible adverse effect of the multiple representation be fully explained to each client in a manner so that both clients will thoroughly understand. Also, meaningful consent must be obtained from both the State and the "other governmental unit." How to obtain "meaningful consent" is a question requiring a legal opinion which is outside the authority of the Subcommittee.

INDIANA STATE BAR ASSOCIATION
LEGAL ETHICS SUBCOMMITTEE

OPINION NO. 7 OF 1978

County Attorney -- Conflicts

The Legal Ethics Subcommittee of the Indiana State Bar Association has been requested to consider several questions regarding the position of county attorney in Indiana, his duties and obligations and any actual or potential conflict of interest arising with respect to any other positions or employments he or other members of his firm might be involved with:

(1) Attorney A who is a member of the law firm A, B & C holds the position of county attorney. Both A and the other members of his firm practice criminal law in the county courts.

(2) Attorney D who is a member of the law firm D, E & F serves as county attorney and practices criminal law with the other members of his firm in the county courts. The firm of D, E & F also represents the county police force, and the police force of the two major cities, X & Y.

(3) Attorney G who is a member of the law firm G & H holds the position of county attorney for X county. Attorney G and/or attorney H purchase real estate at a tax sale officially held by county X.

(4) Attorney I who is a member of the firm of I & J serves as county attorney for Y county. Attorneys I & J also represent persons before the Area Planning Commission and the County Board of Zoning Appeals.

(5) Attorney K who is a member of the firm of K & L is the county attorney, the city attorney, the City Planning Commission attorney, and the School Board attorney.

The Legal Ethics Subcommittee will consider the following questions:

(1) May a county attorney or members of his firm generally represent criminal defendants in the county courts?

(2) May a county attorney, when he or other members of his firm also represent a police agency within the county, represent criminal defendants in county courts?

(3) May a county attorney or members of his firm purchase real estate at a county tax sale?

(4) May a county attorney or members of his firm represent persons before the Area Planning Commission (within the county) or the County Board of Zoning Appeals?

(5) May a county attorney or members of his firm represent a city within the particular county, the City Planning Commission and/or the School Board?

I. INTRODUCTION

Upon reviewing these questions, the Subcommittee felt that the determinative issue with respect to the questions of this opinion is the defining what a "county attorney" in Indiana actually is.

Indiana provides no statutory authority to create the office of county attorney nor is the county attorney elected or appointed. The position of county attorney has been held not to be a "lucrative" office within Article II, Section 9, of the Indiana Constitution.[1]

The Attorney General of the State of Indiana has stated that:

> "the position of County Attorney involves a contract of employment between such attorney and the Board of County Commissioners. The terms of such employment and the duties to be performed thereunder are governed by the contract."[2]

Further, the county attorney is not a position which requires an oath of office. Consequently, the Subcommittee concludes that a county attorney is not an official of the state nor any of its political subdivisions, but is merely a lawyer hired by the county whose scope of employment is determined by contract.

II. COUNTY ATTORNEY'S (WHO DOES NOT REPRESENT A POLICE AGENCY) REPRESENTATION OF CRIMINAL DEFENDANTS IN THE COUNTY COURTS

Whether a county attorney may represent criminal defendants in county courts is determined by whether or not his representation is violative of Canon 5.

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1. 1964 O.A.G. No. 14. 1975 O.A.F. No. 28. 1967 O.A.G. No. 56. See also, Sheldamine v. City of Elkhart, (1920) 493 N.E. 878, and State ex rel. Black v. Burch, 80 N.E. 2d 294.

2. 1964 O.A.G. No. 14, p. 51.

Even though the Subcommittee concludes that a county attorney is not a state official and has not taken any oath of office, he still represents the county notwithstanding the fact that the scope of such representation is defined by an employment contract.

If the county attorney has the duty under law to prosecute criminal defendants (this may vary from county to county), the representation of a criminal defendant by a county attorney would violate Canon 5 (a lawyer should exercise independent professional judgment on the behalf of a client). DR 5-105. In particular, EC 5-1, 5-14 and 5-15 provide:

> "The professional judgment of a lawyer should be exercised, within the bounds of the law, solely for the benefit of his client and free of compromising influences and loyalties. Neither his personal interests, the interests of other clients, nor the desires of the third persons should be permitted to dilute his loyalty to his client."
>
> "Maintaining the independence of professional judgment required of a lawyer precludes his acceptance or continuation of employment that will adversely affect his judgment on behalf of or dilute his loyalty to a client. This problem arises whenever a lawyer is asked to represent two or more clients who may have differing interests, whether such interests be conflicting, inconsistent, diverse, or otherwise discordant."
>
> "If a lawyer is requested to undertake or to continue representation of multiple clients having potentially differing interests, he must weigh carefully the possibility that his judgment may be impaired or his loyalty divided if he accepts or continues the employment. He should resolve all doubts against the propriety of the representation. A lawyer should never represent in litigation multiple clients with differing interests, and there are few situations in which he would be justified in representing in litigation multiple clients with potentially differing interests. If a lawyer accepted such employment and the interests did become actually differing, he would have to withdraw from employment with likelihood of resulting hardship on the clients; and for this reason it is preferable that he refuse the employment initially. On the other hand, there are many instances in which a lawyer may properly serve multiple clients having potentially differing interests in matters not involving litigation. If the interests vary only slightly, it is generally likely that the lawyer will not be subjected to an adverse influence and that he can retain his independent judgment on behalf of each client; and if the interests become differing, withdrawal is less likely to have a disruptive effect upon the causes of his clients."

However, in many counties, the county attorney does not have any prosecutorial duties. In these counties, a county attorney may represent criminal defendants in county courts without violating the Code of Professional Responsibility.

It does not matter whether the county attorney delegates that authority to another, if the particular county attorney by his employment contract has responsibility to prosecute criminal defendants. A lawyer should even avoid the appearance of professional impropriety (Canon 9). EC 9-1 provides:

> "Continuation of the American concept that we are to be governed by rules of law requires that the people have faith that justice can be obtained through our legal system.[a] A lawyer should promote public confidence in our system and in the legal profession."

Thus, in any county in the State of Indiana in which the county attorney (who does not represent a police agency) has a duty to prosecute criminal defendants, the county attorney may not represent criminal defendants in the county courts. However, county attorneys who do not have any prosecutorial duties may represent criminal defendants in county courts.

III. COUNTY ATTORNEY'S (WHO REPRESENTS A POLICE AGENCY) REPRESENTATION OF CRIMINAL DEFENDANTS IN THE COUNTY COURTS

Further, the Subcommittee is of the opinion that any county attorney (who represents a police agency) would violate Canon 5, (a lawyer should exercise independent professional judgment on behalf of a client) if he were to represent a criminal defendant in a county court. See DR 5-105 and EC 5-1, 5-14 and 5-15 quoted hereinabove.

Through his representation of the police agency, the county attorney will have the tendency to develop a close working relationship with the "police community." Such relationship will have a great tendency to adversely affect his independent professional judgment in a criminal case. Thus, such representation is violative of Canon 5 of the I.C.P.R.

In addition, such representation is also violative of Canon 9 (a lawyer should avoid even the appearance of professional impropriety). The criminal defense lawyer's representation of a criminal defendant, against whom charges have been brought by the police agency such lawyer represents, would erode public confidence in law and lawyers. Even if the police agency was not the one that

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a. "Integrity is the very breath of justice. Confidence in our law, our courts, and in the administration of justice is our supreme interest. No practice must be permitted to prevail which invites toward the administration of justice a doubt or distrust of its integrity." Erwin M. Jennings Co. v. DiGenova, 107 Conn. 491, 499, 141A 866, 868 (1928)

the lawyer represents, because of the close operational relationships between police agencies, the erosion of public confidence in the law and lawyers would still occur. Even though the lawyer may exert a vigorous criminal defense, "a lawyer should determine his conduct by acting in a manner that promotes public confidence in the integrity and efficiency of the legal system and the legal profession." EC 9-2.

IV. COUNTY ATTORNEY'S PURCHASE OF A COUNTY-HELD TAX SALE

DR 5-101 (A) and DR 5-104 (A) provide:

> "Except with the consent of his client after full disclosure, a lawyer shall not accept employment if the exercise of his professional judgment on behalf of his client will be or reasonably may be affected by his own financial, business, property, or personal interests."
>
> "A lawyer shall not enter into a business transaction with a client if they have differing interests therein and if the client expects the lawyer to exercise his professional judgment therein for the protection of the client, unless the client has consented after full disclosure."

EC 5-2 provides:

> "A lawyer should not accept proffered employment if his personal interests or desires will, or there is a reasonable probability that they will, affect adversely the advice to be given or services to be rendered the prospective client. After accepting employment, a lawyer carefully should refrain from acquiring a property right or assuming a position that would tend to make his judgment less protective of the interests of his client."

The Legal Ethics Subcommittee is of the opinion that, in certain situations, it would be ethical for the county attorney or members of his firm to purchase real estate at a county tax sale.

The circumstances that must exist to make the tax sale participation ethical are:

(1) the situation is completely disclosed to the county and written approval from the County Board of Commissioners is obtained,

(2) the employment contract does not prohibit such conduct, and

(3) the county attorney's "professional judgment" is not required to be exercised with respect to the particular tax sale.

V. COUNTY ATTORNEY'S REPRESENTATION OF MULTIPLE GOVERNMENTAL UNITS

A county attorney who represents multiple governmental units is representing clients having "potentially differing interests." In view of EC 5-14, 5-15 and 5-16 and DR 5-105, it is the opinion of the Legal Ethics Subcommittee that a county attorney or members of his firm may represent multiple governmental units (e.g. the Area Planning Commission, the County Board of Zoning Appeals, a City within the County, the City Planning Commission or the School Board) provided certain conditions of Canon 5 are satisfied. Namely, the county attorney must make a full disclosure and obtain consent of the affected governmental units, and the contractual agreement must not prohibit such conduct. See Opinion No. 6 of 1978.

VI. RECOMMENDATIONS

Although not specifically requested, the Legal Ethics Subcommittee is of the opinion that due to the importance of the relationship between the Board of County Commissioners and the county attorney, every county attorney should accept employment only pursuant to a written employment agreement. The Subcommittee is well aware that many county attorney positions are held pursuant to oral understanding. However, for the county attorney's own protection, the understanding should be reduced to writing. Certainly without much imagination one can think of numerous situations that could surface that would put both the county attorney, the county, and the county attorney's clients in very awkward positions.

INDIANA STATE BAR ASSOCIATION
LEGAL ETHICS SUBCOMMITTEE

OPINION NO. 8 OF 1978

Credit Cards

QUESTION

In light of the recent amendments (See Res Gestae, January, 1978, pgs. 14-20, 42) to Canon 2 of the Indiana Code of Professional Responsibility regarding advertising, the Legal Ethics Subcommittee has been requested to reconsider Indiana Formal Opinion No. 4 of 1975 relating to the use of credit cards for the payment of legal fees.

DISCUSSION

Indiana Opinion No. 4 of 1975 sets out four conditions that should be met before any attorney in Indiana may use a credit card arrangement for the payment of fees. The effect of the recent amendments to the Indiana Code of Professional Responsibility on all four conditions will be discussed below.

Condition No. 1

Indiana Opinion No. 4 of 1975 provides that:

> "(1) The plan must be approved by the ethics committee of the local bar association. (Local bar associations, if they desire to use credit card arrangements, and do not have an active ethics committee, should appoint such a committee prior to implementing a credit card plan. If the local bar association fails to appoint such a committee, the local bar association may submit the proposed plan to the Legal Ethics Committee of the Indiana State Bar Association for its approval.)"

Recent amendments to the Indiana Code of Professional Responsibility regarding advertising do not affect Condition No. 1, as advertising was only one of the many considerations before the Subcommittee at the time Indiana Opinion No. 4 of 1975 was drafted. However, the Subcommittee believes that it has no authority to approve any credit card plan. Subcommittee opinions are advisory only. Thus, Condition No. 1 is withdrawn.

Condition Nos. 2 and 3

Indiana Opinion No. 4 of 1975 provides that:

> "(2) The plan, in order to be approved, must comply with the requirements of Formal Opinion No. 338 of the Ethics Committee of the American Bar Association."
>
> "(3) Individual attorneys operating under the plan must conform their behavior to the requirements of Formal Opinion No. 338."

ABA Formal Opinion No. 338 sets our six considerations required by a conforming credit card plan, the first three of which are related to the recent amendments.

ABA Consideration No. 1 provides:

> "All publicity and advertising relating to a credit card plan shall be subject to the prior approval in writing of the state or local bar committee having jurisdiction of the professional ethics of the attorneys involved."

"Reasonable regulation of lawyer advertising designed to foster compliance" with the Indiana Code of Professional Responsibility is inherently permitted. EC 2-9. However, to require attorneys to obtain prior approval of "all publicity and advertising relating to a credit card plan" is outside the authority of the Subcommittee. Also, the Disciplinary Rules of the Indiana Code of Professional Responsibility now specifically provide that a "lawyer may publish . . . or broadcast" information relating to "whether credit cards or other credit arrangements are accepted." See DR 2-101 (B) (17). Further, the Ethical Considerations provide that advertisements may include "office information, such as . . . credit card acceptability." EC 2-8. Clearly, Consideration No. 1 is too broad to comply with the I.C.P.R. and, therefore, is withdrawn.

ABA Consideration No. 2 provides:

> "No directory of any kind shall be printed or published of the names of individual attorney members who subscribe to the credit card plan."

The recent amendments to the Indiana Code of Professional Responsibility withdrew the requirement that a directory must be "reputable." See DR 2-102 (A) (6) prior to the amendments. Additionally, DR 2-103 (C) has been amended to be consistent with the ABA Code of Professional Responsibility. Thus, Indiana Opinion No. 4 of 1975 is revised accordingly and this consideration is withdrawn.

ABA Consideration No. 3 provides:

> "No promotional materials of any kind will be supplied by the credit card company to a participating attorney except possibly a small insignia to be tactfully displayed in the attorney's office indicating his participation in the use of the credit card."

All "promotional materials" used by a lawyer must comply with the I.C.P.R., otherwise no restrictions are placed on a lawyer. Thus, this consideration is also withdrawn.

ABA Consideration Nos. 4, 5 and 6 provide:

> "A lawyer shall not encourage participation in the plan, but his position must be that he accepts the plan as a convenience for clients who desire it; and the lawyer may not because of his participation increase his fee for legal services rendered the client."
>
> "Charges made by lawyers to clients pursuant to a credit card plan shall be only for services actually rendered or case actually paid on behalf of a client."
>
> "In participating in a credit card program the attorney shall scrupulously observe his obligation to preserve the confidences and secrets of his client."

Each of these considerations is deemed entirely proper.

Condition No. 4

Condition No. 4 refers to the agreements between attorneys and banks. Only subpart (B) (3) and subpart (C) (4) (a) pertain to advertising.

Subpart (B) (3) requires the lawyer to agree:

> "to display only a small credit card insignia within the attorney's office and not to display any insignia which is viewable from outside the attorney's office, or to display any reference to the availability of the credit card arrangement on statements, letterheads, doors or otherwise."

DR 2-101 (B) is specifically directed to a lawyer who desires to "publish" or "broadcast" either in "print media" or "over radio." Nowhere in DR 2-101 (B) is a lawyer presently allowed to advertise in other ways than those specified. DR 2-102 provides that:

> "(A) A lawyer or law firm shall not use or participate in the use of professional cards, professional announcement cards, office signs, letterheads, or similar professional notices or devices"

unless they fall within certain exceptions contained in DR 2-102. The "display" of Condition No. 4 does not fall within any exceptions to DR 2-102, and consequently Condition No. 4, subpart (B) (3), is entirely proper.

Condition No. 4, subpart (C) (4) (a), requires the bank to agree to "clear through the ethics committee of the local county bar association . . . (a) publicity of any kind." A common sense reading of this language requires that the term "publicity of any kind" means bank-generated publicity. The bank is not subject to the I.C.P.R. and, consequently, the amendments to the I.C.P.R. do not affect Condition No. 4, subpart (C) (4) (a). However, "prior approval" of publicity may be outside the authority of the ethics committee of the local county bar association.

Each of the remaining portions of Condition No. 4 is deemed entirely proper. Similarly, the agreement and letter of Appendix A are deemed proper under the Indiana Code of Professional Responsibility as amended.

Opinion No. 4 of 1975 is so modified.

INDIANA STATE BAR ASSOCIATION
LEGAL ETHICS SUBCOMMITTEE

OPINION NO. 9 OF 1978

The Legal Ethics Subcommittee has been asked whether the lender's attorney may represent the buyer and the seller in a real estate transaction.

The three clients involved, the lender, the buyer, and the seller, have actually differing interests. Whether the lawyer is justified in representing more than one of them is governed by DR 5-105 (C). If he is justified in representing more than one of them, each should be given the opportunities and explanations stated in both DR 5-105 (C) and in EC 5-16.

INDIANA STATE BAR ASSOCIATION
LEGAL ETHICS SUBCOMMITTEE

OPINION NO. 10 OF 1978

The Legal Ethics Subcommittee has been asked whether it is proper for a lawyer to represent the seller in a real estate transaction when the lawyer has been selected by a real estate broker and has no personal communication with the seller.

ABA Informal Opinion 508 determined such conduct was improper on the basis of Canon 35 which provided that:

> "The professional services of a lawyer should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and lawyer. The lawyer's responsibilities and qualifications are individual. He should avoid all relations which direct the performance of his duties by or in the interest of such intermediary. A lawyer's relation to his client should be personal, and the responsibilities should be direct to his client."

That Canon was omitted from the Code of Professional Responsibility.

If the real estate broker is the seller's agent, it is the opinion of the Subcommittee that it is proper for the lawyer to represent the seller under these circumstances provided all the requirements of the Code of Professional Responsibility are met.

Res Gestae - February, 1979