THE ADVISORY COMMITTEE
of the
NEBRASKA STATE BAR ASSOCIATION

OPINION NO. 71-4

A lawyer should not lease from the County Judge before whom he actively practices a building owned by the judge and which the judge formerly used as a law office in an adjoining county, for the purpose of establishment by the lawyer of a branch office for the practice of law.

CODE PROVISIONS INTERPRETED:

CANON 9. A Lawyer Should Avoid Even the Appearance of Professional Impropriety.

EC 9-2 ". . . On occasion, ethical conduct of a lawyer may appear to laymen to be unethical . . . . 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."

EC 9-6 "Every lawyer owes a solemn duty . . . to strive to avoid not only professional impropriety but also the appearance of impropriety."

JUDICIAL ETHICS, CANONS:

CANON 26 ". . . . It is desirable that he should, so far as reasonably possible, refrain from all relations which would normally tend to arouse the suspicion that such relations warp or bias his judgment, or prevent his impartial attitude of mind in the administration of his judicial duties."

FACTUAL SITUATION

A law firm desires to establish a branch office in an adjoining county for regular service to a local client and for such additional business as may develop. The County Judge

in the home county before whom the law firm practices regularly formerly resided in the adjacent county and owns the building which he formerly used for the practice of law. The building has been temporarily occupied by a business firm but is now available for use as a law office.

QUESTION

Is it ethically proper for the law firm to lease the building above described from the County Judge?

DISCUSSION

The new Code of Professional Responsibility in the area under consideration does not appear to greatly differ from the requirements of the earlier Canons. Formal Opinion No. 89, applying the latter, held that a lawyer may not enter into a contract with a judge before whom he practices, which in effect constitutes a loan.

> "On the basis of the opinion of the real estate men, and assuming that their valuation is correct, the second mortgage is simply a loan from the lawyer to the judge and is contrary to Judicial Canons Nos. 24 and 32 relating to a judge accepting favors from lawyers practicing before him. It is also subject to criticism under the Judicial Canon 4 requiring careful conduct on the part of judges. The lawyer making the loan to the judge also would seem to be violating Canons 3 and 20 of Professional Ethics. The lawyer is subject to criticism for making the loan and the judge for accepting it."

In this connection the new Code in Note 5 quotes a decision of our Supreme Court as follows:

> "As said in Opinion 39, of the Committee on Professional Ethics and Grievances of the American Bar Association, page 134; 'An attorney should not only avoid impropriety but should avoid the appearance of impropriety.' State ex rel. Nebraska State Bar Ass'n v. Richards, 165 Neb. 80, 93, 84 N.W.2d 136, 145 (1957)."

The Supreme Court in the case just cited continues in its opinion as follows:

"See, also, Opinion 77, of the Committee on Professional Ethics and Grievances of the American Bar Association, page 182. And, as stated in Opinion 34, of the Committee on Professional Ethics and Grievances of the American Bar Association, page 118 : ' . . . it is the duty of an attorney in public employ to be and remain above all suspicion, even at personal financial sacrifice."

While this committee may have no authority or duty to administer the Canons of Judicial Ethics, their consideration may be pertinent as affecting the duties and obligations of a lawyer to his County Judge. Canon 4 of the Judicial Ethics states that a judge's conduct "should be free from impropriety and the appearance of impropriety." Canon 24 provides that a judge should not "incur obligations, pecuniary or otherwise, which will in any way interfere or appear to interfere" with his official function.

Canon 26 states as to judges:

"It is desirable that he should, so far as reasonably possible, refrain from all relations which would normally tend to arouse the suspicion that such relations warp or bias his judgment, or prevent his impartial attitude of mind in the administration of his judicial duties."

There is nothing whatever on the face of the proposed lease that suggests anything improper in any way on the part of the judge or the law firm. Furthermore, it cannot be said that the proposed lease directly and clearly violates any provision of the Code of Professional Ethics. There does, however, appear to exist in the proposed transaction, possible misinterpretation and misunderstanding by the public, which should be avoided.

While the Code does not absolutely prohibit all business transactions between a lawyer and a judge before whom he practices, it would seem that the letter and spirit of the Code as well as the Judicial Code, does not lack with favor on such business transactions, at least where they relate to or are connected in any way with the practice of law.

CONCLUSION

The Committee believes that the law firm should not enter into a lease with the County Judge for use of a building owned by him for the practice of law as described in this opinion.