

FORMAL OPINION NO. 82*

The Ethics Committee for the Idaho State Bar has been solicited for an informal opinion on the following question:

May an attorney who is elected judge thereafter properly continue in the common ownership with his former law partners of the building owned by the partnership wherein the remaining partners continue to rent the building pursuant to a written lease requiring a stipulated monthly rental and where the remaining partners will thereafter be practicing before the same judge?

The applicable rule covering such situations is designated as Canon 26 of the Canons of Judicial Ethics and is quoted as follows:

"A judge should abstain from making personal investments in enterprises which are apt to be involved in litigation in the court; and, after his accession to the Bench, he should not retain such investments previously made, longer than a period sufficient to enable him to dispose of them without serious loss. 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."

We find no case in point. A judge, however, is not required to divest himself of his business interests on assuming the bench unless the maintenance of business interests would likely cause him to disqualify himself with some frequency because of conflicts that might arise. Therefore, there appears to be no impropriety

in the judge's maintaining his joint ownership in the office building in question. There is the added element that his former partners will remain as the tenants of the jointly owned building. Here again, we find no impropriety as such in this relationship as the rental is fixed and the judge's income from the property is likewise fixed and therefore not dependent in amount on the success or failure of the former partners in their proceedings before the judge.

Some discomfort is felt by the committee in viewing this continuing relationship in light of Canon 4 of the Judicial Ethics as the judge is called upon to avoid even the appearance of impropriety. It would seem to us that it would be improper for a judge to maintain an active business association with practitioners who appear before him at the Bar, whether they be former partners or otherwise. We feel in the present case, however, that so long as the precise relationship falling within the scope of this question is not enlarged such appearance of impropriety should not exist in this case.

DATED November, 1974.

*Although this opinion probably remains valid, the Committee on Ethics and Professional Responsibility of the Idaho State Bar no longer comments on the propriety of judicial conduct. Such conduct is regulated by the Idaho Judicial Council.