

NEW YORK STATE BAR ASSOCIATION  
Professional Ethics Committee Opinion

Opinion #65(a) - 1/29/70 (28-69) Topic: Conflict of Interest.  
Sharing Office Space with Part-Time Judge.

Digest: Not improper to share office space with part-time judge, but improper to practice in judge's court.

Code\*: Canon 9  
Judicial Canons 9, 31

QUESTION

May attorneys sharing office space with a part-time or acting judge practise before that judge or any other judge of the same court?

OPINION

Such practice would not be proper. In Opinion No. 65 (1969) of this Committee it was held that law partners or associates of a part-time judge cannot properly practise in the court of which the judge is a member. This Committee is of the same opinion in the case of lawyers who are not partners or associates but who share office space with the judge. (See Canon 9.) The American Bar Association Professional Ethics Committee has reached the same conclusions in its informal opinions numbered 284, 855 (1965) and 995 (1967). See also ABA No. 104 (1934).

As we stated in our Opinion No. 29 (1966) "Public confidence in our courts and in the administration of justice depends not only on the avoidance of actual impropriety, but equally on the avoidance of the appearance of possible impropriety. A disappointed litigant must not be permitted to wonder whether he might have lost, not on the apparent weakness of his case, but rather because his opponent was represented by a partner or office associate of the [judge before whom the case is tried]." The same kind of possible doubts may arise where the relationship between the judge and opposing counsel is that of a space-sharer.

Opinion #66 - 1/8/68 (23-67) Topic: Writing for Lay Publication.

Digest: Lawyer may author articles of general legal information so long as he does not answer specific questions and does not appear to solicit.

Canon: Former Canons 27, 35, 40

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QUESTION

A lawyer who is the counsel to a trade association has been requested to submit articles discussing matters of law pertaining to the industry for inclusion in the association's monthly bulletin. This bulletin is distributed, without charge, to the members of the association and others interested in the industry who are on the association's mailing list. The articles would appear over the lawyer's name. He asks whether there would be any ethical objection.

OPINION

It is the Committee's opinion that the proposed practice would not be improper provided that the articles contain only general information and do not attempt to answer specific questions submitted by members of the association seeking legal advice relating to their own affairs. Identification of the lawyer should be limited to the fact that he is a lawyer and a member of the Bar and counsel to the association.

Canon 40, provides in part: "A lawyer may with propriety write articles for publications in which he gives information upon the law." An attorney so doing does not violate the provisions of Canon 35 which state that the relations between a lawyer and those to whom he gives legal advice should be direct and personal and that this service must not be exploited by an intervening lay agency. Also, the practice would not violate Canon 27 which prohibits solicitation or advertising if the articles are of a general nature. See Opinion No. 92 of the American Bar Association.

Opinion No. 804 of The Association of the Bar of the City of New York, dated May 2, 1955, approved the publication and dissemination of a statement prepared by a lawyer who was counsel to a trade association concerning the import and effect of a court decision of interest to the industry and the members of the association. The Committee stated, however, that care should be exercised to avoid having the statement contain anything that could be interpreted either as giving advice to members of the association in respect to their individual affairs or as indirect advertising.

Informal Decision No. 538 of the American Bar Association holds that it is not improper for the legal advisor of a fraternal organization to contribute articles of a general nature on practical questions of law to the organization's publication.

Opinion #67 - 1/8/68 (29-67)

Topic: Advertising.  
Newspaper Publicity.

Digest: Lawyer may not arrange newspaper publicity for client where lawyer's name or picture would also appear.

Canon: Former Canons 20, 27