

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

Accepted local custom in New York recognizes that the name of a law firm does not necessarily identify the individual members of the firm, and hence the continued use of a firm name after the death of one or more partners is not a deception and is permissible. (N.Y.State 45 (1967))

However, it is the opinion of this Committee that a former associate may not continue the use of a firm name containing the names of the deceased partners because to do so carries the implication that the surviving associate was a partner. This does not preclude the use of the name for the purpose of winding up the affairs of the former partnership. See N.Y. State 48 (1967) for guidance in connection with the ethical aspects of winding up a deceased lawyer's practice.

Opinion #149 - 7/20/70 (24-70)

Topic: Conflict of Interest;
Public Attorneys;
Private Representation.

Digest: Attorneys who are the part-time legal staff of a city should not represent private clients in criminal matters before the same tribunals before which they appear as prosecutors on behalf of the city.

Code*: DR 5-105 (A), (B) and (C)
Former Canon 6.

QUESTION

May members of the part-time legal staff of a city's Corporation Counsel represent private defendants in criminal proceedings?

OPINION

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

"(A) 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).

"(B) A lawyer shall not continue multiple employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by his representation of another client, except to the extent permitted under DR 5-105(C).

"(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."

The consent based upon full disclosure that is mentioned in DR 5-105 (C) cannot be utilized by one who has an official position. (See ABA Opinions 16, 34, 71, 77 and 192.)

**NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion**

If the duties of a city's Corporation Counsel or his legal staff include prosecution in any court of offenders against criminal statutes or municipal ordinances, it would be improper for any of them to defend any person accused of a crime in any court in which they have authority to appear as prosecutors. See ABA Opinion 34 (1931) and ABA Opinion 128 (1935).

A prosecutor represents the authority of the state and he cannot therefore represent anyone being prosecuted by a public authority. If this were not so, the client might suffer from a subjective hesitancy on the part of the attorney to assert all appropriate defenses, such as challenges to constitutionality of statutes or ordinances or jurisdiction or authority of the city or its agents.

There would also be harm to the reputation of the bar because the public might be led to believe that the selection of such counsel by defendants had an ulterior motive and was based on considerations other than legal ability. (See ABA Opinion 128 (1935).) The public should be reassured that the processes of all its courts are free of favor or prejudice.

For these reasons it is the opinion of the Committee that neither the Corporation Counsel nor any member of his legal staff may properly represent private defendants in criminal matters in any tribunal before which they may appear as prosecutors on behalf of the city.

This would not be true if the Corporation Counsel had no authority as a prosecutor but dealt only with civil matters provided no conflict exists in the particular case.

Opinion #150 - 8/18/70 (20-70) Topic: Conflict of Interest;
Appearance of Impropriety

Modified by #228

Digest: Attorney who is justice
of the peace acting as
defense attorney in court
of another town

Code*: Canon 9
DR 9-101
EC 9-2
Canons of Judicial Ethics
No. 31

QUESTION

Is it proper for a lawyer who is a part-time Justice of the Peace and for his partners and associates to act as defense counsel for criminal defendants in a town other than the town in which he sits as justice.

OPINION

The Justice of the Peace Court is territorially limited to a particular town and to specified types of cases. In view of these limitations it is not improper for a lawyer who is a Justice of the Peace in one town to practice law as counsel for criminal defendants in another town, provided the circumstances are such that there is no reasonable likelihood, because of proximity of the place of prac-