

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

conduct in his practice whereby he utilizes or seems to utilize his judicial position to further his professional success."

It is the Committee's opinion that in a letterhead used for private practice, it is improper to show a present or former public office held by the lawyer.

Opinion #165 - 11/6/70 (41-70)

Topic: Public Defender;
Appearance of Impropriety.

Modified by #587 (1987)

Digest: A part-time Public Defender may not be privately retained to represent an accused who initially contacted the Public Defender's office but was found unqualified for aid.

Code*: Canon 9
EC 9-2
DR 2-103 (D) (1)
DR 2-104 (A) (2) and (A) (3)

QUESTIONS

Is it ethically proper for an attorney who is employed part-time as a county Public Defender to be retained in his private practice by an accused who initially contacted the Public Defender's office but was found unqualified for public assistance.

Do any of the following considerations alter the ethical result:

1. Advising the accused that he is entitled to select counsel of his own choosing.
2. Requiring the accused to execute an affidavit attesting to the voluntary employment by him of the Public Defender's private office.
3. Obtaining permission from the court in which the case is pending for the Public Defender's private office to act on behalf of the accused.

OPINION

Canon 9 provides:

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

EC 9-2 provides:

"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."

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These provisions lead to the conclusion that for a lawyer to accept compensation from a client who has previously sought uncompensated public assistance from that same lawyer would clearly undermine confidence in the integrity of the profession. The public might get the impression that the office of the public defender is being used for the personal advantage of the members of the public defender's staff.

The suggested safeguards do not dispel this impression. In fact, the need to take extraordinary precautions might emphasize the appearance of impropriety that the conduct described in the letter of inquiry is ethically improper under the existing Canons.

DR 2-104(A) is not inconsistent with this opinion. It provides in part:

"A lawyer who has given unsolicited advice to a layman that he should obtain counsel or take legal action shall not accept employment resulting from that advice, except that:

- (2) A lawyer may accept employment that results from his participation in activities designed to educate laymen to recognize legal problems, to make intelligent selection of counsel, or to utilize available legal services if such activities are conducted or sponsored by any of the offices or organizations enumerated in DR 2-103(D)(1) through (5) and to the extent and under the conditions prescribed therein.
- (3) A lawyer who is furnished or paid by any of the offices or organizations enumerated in DR 2-103(D)(1), (2), or (5) may represent a member or beneficiary thereof, to the extent and under the conditions prescribed therein."

Both of the foregoing disciplinary rules refer back to DR 2-103 (D) (1), which mentions by name a "public defender office".

The above exceptions are not controlling. The former permits the acceptance of employment where the attorney is involved in the educational aspects of a public defender's office and the latter permits a compensated public defender to act as a public defender.

Opinion #166 - 11/6/70 (43-70)

Topic: Advertising;
Office Signs.

Digest: A dignified certificate stating attorney is approved agent of Title Company may not be displayed in office.

Code*: DR 2-101 and DR 2-102.