

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

QUESTION

1. Is it proper for a lawyer who serves as a Public Defender, on a part-time basis, to be retained to represent an accused who is not an indigent and who has not requested the services of the Public Defender's Office?

2. Is such representation proper if the interests of a co-defendant represented by the Public Defender's Office conflict with those of his client?

OPINION

It is proper for a lawyer who serves as a Public Defender on a part-time basis to be retained to represent an accused who is not indigent and who has not requested the services of the Public Defender's Office prior to retaining the Public Defender. ABA Inf. 1112 (1969).

N.Y. State 165 (1970) held that a part-time Assistant Public Defender could not, in his private capacity, represent a defendant who had been refused representation by the Public Defender's Office as unqualified for public assistance. In the instant case, since the defendant never sought Public Defender aid and is not indigent, there is no appearance of impropriety. Accordingly, in the absence of a conflict of interest, the lawyer could properly represent the defendant as a private client.

N.Y. State 171 (1970) which held that a part-time district attorney could not represent a criminal defendant is not applicable because the part-time district attorney is counsel for the State.

Where there are co-defendants with conflicting interests, both cannot be represented by the Public Defender's Office or by members of his staff, either in their private or public capacities. In such cases special counsel should be appointed. N.Y. State 33 (1966).

N.Y. State 33 (1966) is not inconsistent with this opinion because it related to an "Assistant" Public Defender appointed solely to handle conflict of interest cases and not to serve as a regular member of the Public Defender's Office.

Opinion #174 - 12/11/70 (59-70) Topic: Office Signs.

Digest: Sign near street in front
of building may be improper.

Code*: DR 2-102 (A)(3)

QUESTION

Where the building in which the lawyer has his office is set back from the street, if a dignified law office sign on the building on or near the office door is legible from the street, may a sign be placed near the street in front of the building?

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OPINION

In N.Y. State 92 (1968), this committee laid down guidelines for signs. DR 2-102 (A)(3) provides that a lawyer shall not use office signs except a dignified sign on or near the door of the office and in the building directory identifying the law office. This committee affirms N.Y. State 92 as applicable under the Code of Professional Responsibility.

The only justified function of a sign is to make it possible for clients and prospective clients to locate easily a previously selected lawyer. The propriety of a sign and its location depend upon the circumstances of each case.

Where a lawyer's office is easily located through its street address, a dignified sign on the building is sufficient. If a sign near the street is not necessary for locating the lawyer, its only purpose is advertising. Under some limited circumstances, a dignified sign near the street is proper. See N.Y. State 92 (1968) relating to rural areas. In a proper case a lawyer's name could appear on an office directory sign which includes substantially all of the occupants of a multi-office building.

Where a sign is properly situated near the street, it would not be proper to have a second sign on the building. See N.Y. State 92.

Opinion #175 - 3/1/71 (26-70)

Topic: Firm Name;
Out-of-State Members

Digest: Whether the name of out-of-state members may be included in the firm name depends upon the facts of each case.

Code*: DR 2-102(D)
EC 2-11, 3-9

QUESTION

May a multi-state law firm use for its New York office a name composed of one or more partners who are not admitted to practice in the State of New York?

OPINION

DR 2-102(D) provides:

"A partnership shall not be formed or continued between or among lawyers licensed in different jurisdictions unless all enumerations of the members and associates of the firm on its letterhead and in other permissible listings make clear the jurisdictional limitations on those members and associates of the firm not licensed to practice in all listed jurisdictions; however, the same firm name may be used in each jurisdiction."