

NEW YORK STATE BAR ASSOCIATION  
Professional Ethics Committee Opinions

(1922), also quoted in Drinker, "Legal Ethics," page 115, as follows:

"(T)he rendition of professional services by an attorney to one party of a litigation, which thus establishes necessarily a relation of trust and confidence, precludes the acceptance of employment by such attorney in any subsequent phase of the same litigation from the adverse party. A client is encouraged to make full disclosure of all facts to his attorney and he should be justified in feeling that his attorney will never be found helping the other side of the litigation. The matter is not to be determined by such facts as, that the original services were rendered on the employment of another lawyer, or that the services may have had no particular bearing upon the phase of the litigation contemplated to be conducted in behalf of the new employer, or that it is probable that no information was acquired in the first employment that might prove useful in the subsequent employment. Irrespective of any actual detriment, the first client might naturally feel that he had in some way been wronged when confronted by a final decree obtained by a lawyer employed in his behalf in an earlier part of the same litigation. To maintain public confidence in the Bar it is necessary not only to avoid actual wrong doing but an appearance of wrong doing."

Canon 9, EC 9-1, 2; see also ABA Inf. 1016 (1968).

Opinion #181 - 3/23/71 (6-71)

Topic: Practice of part time city judge in courts outside the city.

Digest: Part time judge of city court having limited countywide civil and citywide misdemeanor jurisdiction may not properly practice criminal law in courts outside the city, but may practice civil law.

Code\*: Canon 9  
EC 9-2, 9-6

Canons of Judicial Ethics: 31

QUESTION

The judgeship of a city court which has countywide civil jurisdiction up to \$500 and citywide misdemeanor jurisdiction, is a part time position for which a salary of \$6,000 a year is paid. May such city judge practice law in other courts?

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OPINION

It is assumed that nothing in the law prevents private practice by such a judge.

A number of opinions of this committee and of the Ethics Committee of the American Bar Association have held that one holding a position of this nature may not with propriety practice criminal law in other courts. ABA 242 (1942); N.Y. State 146 (1970); N.Y. State 146(a) (1970). Such practice would weaken the confidence of the public in the impartiality and objectivity of the judiciary and would be subject to the suspicion that the judge was using the prestige of his position to further his private practice. Canon 9, and see EC 9-2 and 9-6, and Judicial Canon 31.

This committee has ruled that a justice of the peace may practice criminal law in courts outside the territorial jurisdiction of his own court because these positions pay little compensation, the conflict of interest is minor, and it would be difficult to induce lawyers to accept such positions unless they were permitted such practice. The committee is of the opinion that the judge of a city court, even part time, is not such a position in respect to criminal law, and that it would be improper for him to engage in such practice, even outside the city.

However, with respect to civil law matters, considering the limited jurisdiction of the court and the salary paid the judge, the committee is of the opinion that the conflict of interest is minimal and that the judge of such a court may properly engage in private practice in civil cases before higher courts in the city or before other courts outside the city.

Opinion #182 - 3/23/71 (12-71)

Topic: Lawyer referral plan for narcotic cases.

Digest: Lawyer may properly participate in referral panel for narcotic cases provided plan is approved by appropriate bar association.

Code\*: EC 2-15  
DR 2-103(C); 2-103(D) (3);  
2-105(A) (2).

QUESTION

A civic organization plans to establish a referral service which will maintain a panel of attorneys qualified to handle narcotic cases. Each panel member will negotiate his own fee with each client. There will be no solicitation by the civic organization, which will act only in the event a person seeking assistance requests that he be referred to an attorney. May an attorney properly participate as a panel member?