

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinions

"A lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned."

In addition, the lawyer should cooperate with counsel subsequently employed and otherwise endeavor to minimize the possibility of harm to his client. EC 2-32; See, N.Y. City 364 (1936).

Opinion #213 - 11/22/71 (46-71)

Topic: Solicitation

Digest: A lawyer may permit the use of his name in a businessmen's brochure but not the fact that he is an attorney.

Code*: DR 2-101(B)

QUESTION

May a lawyer member of a businessmen's association include his name and occupation in a brochure designed to attract business to the area?

OPINION

A lawyer shall not publicize himself nor shall he authorize others to do so on his behalf. DR 2-101(B) provides in part "A lawyer shall not publicize himself, his partner or associate as a lawyer through newspaper or magazine advertisements, radio or television announcements, display advertisements in city or telephone directories or other means of commercial publicity, nor shall he authorize or permit others to do so in his behalf."

Only the listing of the name of the attorney without reference to his occupation in such brochure would be permitted. See N.Y. State 201 (1971).

Opinion #214 - 11/22/71 (47-71)

Topic: Conflict of Interest
Town Justice and
Assistant District
Attorney Office
Associates.

Digest: An attorney may not act as town justice in a town within the county in which his office associate is district attorney.

Code*: Canon 9
Canons of Judicial Ethics: 4, 13,
26.

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QUESTION

May one associate of a law firm hold office as a town justice in a town within a county where another associate of the same firm is an assistant district attorney as long as the latter person never appears in said town?

OPINION

In N.Y. State 118(1969) it was held that it would be improper for a village police judge to sit in judgment on criminal matters in a jurisdiction where his partner is an assistant district attorney, stating:

"The district attorney's office is comparable to a legal partnership. Such a partnership, through the particular assistant district attorney, is (indirectly) associated with the judge of the village court. The district attorney and his assistants are therefore ethically prohibited from prosecuting any criminal case before this village court...."

The decision would be the same if the assistant district attorney and the judge were not partners, but merely office associates or employees of the same firm. ABA A-284. As stated in ABA 104 (1934):

"A and B, however, are not co-partners....but the public, knowing of their intimate relation as office associates, may infer that there is some influence operating in their establishment.....Lawyers should not conduct themselves in such a way as to impair the confidence which the community have in the administration of justice."

If the justice of the peace and the assistant district attorney were office associates, the justice of the peace would be disqualified from presiding in any case in which the district attorney or any of his assistants appeared. Judicial Canon 4, 13, 26; Canon 9. Accordingly, it would not be proper in a town which is within a county where his office associate is district attorney, for a lawyer to accept the position of justice of the peace.

Opinion #215 - 11/22/71 (49-71)

Topic: Attorney circularizing other attorneys.

Digest: Within proper limits an attorney may send a dignified letter to other attorneys stating that he specializes in a particular branch of law and is available to act as a consultant.

Code*; DR 2-105(A) (3)