

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinions

A lawyer shall not publicize himself nor shall he authorize others to do so on his behalf. DR 2-101(B). See, N.Y. State 201 (1971); N.Y. State 213 (1971). A lawyer should assist in maintaining the integrity and competence of the legal profession. Canon 1. A lawyer should avoid even the appearance of professional impropriety. Canon 9.

Opinion #217 - 12/20/71 (45-71)

Topic: Prosecuting Attorney:
Political Activity.

Digest: Prosecuting attorney
may not be member of
county committee of
political party.

Code*: Canon 9;
EC 7-13; 8-8; 9-6

Canons of
Judicial Ethics: Canon 28

QUESTION

May an attorney who is a District Attorney be a member of a County Committee of a political party?

OPINION

Apart from any restrictions imposed by law, we are of the opinion that it would not be proper for a prosecuting attorney to be a member of a County Committee of a political party. See Public Officer's Law Sec. 73(8); Election Law Secs. 181, 426; 18 USC Sec. 595. The duties and responsibilities of a prosecuting attorney are unique and differ greatly from those of a lawyer engaged in private practice. His position is not only that of advocate but of administrator of impartial justice. As stated in ABA 150 (1936), "it is his primary duty not to convict but to see that justice is done."

EC 7-13 provides that:

"The responsibility of a public prosecutor differs from that of the usual advocate; his duty is to seek justice, not merely to convict. This special duty exists because: (1) the prosecutor represents the sovereign and therefore should use restraint in the discretionary exercise of governmental powers, such as in the selection of cases to prosecute; (2) during trial the prosecutor is not only an advocate but he also may make decisions normally made by an individual client, and those affecting the public interest should be fair to all; and (3) in our system of criminal justice the accused is to be given the benefit of all reasonable doubts. With respect to evidence and witnesses, the prosecutor has responsibilities different from those of a lawyer in private practice: the prosecutor should make timely disclosure to the defense of available evidence, known to him, that tends to negate the guilt of the

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accused, mitigate the degree of the offense, or reduce the punishment. Further, a prosecutor should not intentionally avoid pursuit of evidence merely because he believes it will damage the prosecutor's case or aid the accused."

Canon 28 of the Canons of Judicial Ethics prohibits a judge from becoming a member of a party committee, the underlying principle being that "it is inevitable that suspicion of being warped by political bias will attach to a judge who becomes the active promoter of the interests of one political party as against another". It has been held that a justice of the peace may not serve on a county committee. N.Y. State 137(a) (1970). Public confidence in the impartiality of a prosecuting attorney demands that he be equally free of such suspicion. The political pressures that may be brought to bear upon a district attorney are multiplied if he is active in party affairs.

Furthermore, EC 8-8 provides in part that:

"A lawyer who is a public officer, whether full or part-time, should not engage in activities in which his personal or professional interests are or foreseeably may be in conflict with his official duties."

The success of a district attorney in his public career is much more likely to be involved with his political activities, by the very nature of his public position, than is the case of the lawyer engaged in private practice. It is essential that he avoid the appearance of impropriety which may be created by his active participation in partisan political affairs. Canon 9; EC 9-6: see, ABA 192 (1939).

Opinion #218 - 12/20/71 (48-71)

Topic: Conflict of Interest
Part-time Prosecuting
Attorney

Digest: Part-time prosecuting
attorney should not
represent a private
client in a judicial
proceeding against the
municipality which em-
ploys him.

Code*: EC 5-15; 8-8;
DR 5-105(A), (B) and
(C)

QUESTION

May a part-time prosecuting attorney, who is not an officer of the city, represent a private litigant in a certiorari proceeding in the Supreme Court against the city which employs him?