

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinions

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?

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OPINION

EC 8-8 provides 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."

In ABA 186 (1938), it was held that a county attorney, acting only in civil matters, should not represent a defendant in a criminal proceeding. The opinion states in part:

". . . for the county attorney charged with public duties to accept employment adverse to this public employer puts the county attorney in an unseemly situation likely to destroy public confidence in him as a public officer, and bring reproach to his profession."

The crucial fact is that the prosecuting attorney's client is the city. It is improper for an attorney, at the same time that he represents a client, to sue that client in an unrelated matter on behalf of another. EC 5-15; DR 5-105(A), (B) and (C). Consent would generally be unavailing in such a situation; and, in addition, unavailing in this case since the city cannot give consent. N.Y. State 143 (1970).

Accordingly, such representation would be improper.

Opinion #219 - 12/20/71 (51-71)

Topic: Solicitation of work from counsel for a corporation whose stock is held by soliciting attorney

Digest: An attorney should not solicit employment

Code*: DR 2-103(A); (C)

QUESTION

May an attorney who owns stock in a corporation listed on a stock exchange write counsel for the corporation, advising that he is a stockholder and wishes to handle any legal work the corporation might have in his city or to become local counsel for the corporation?