



Committee on Professional Ethics

Opinion #257 - 9/15/72 (34--72)

Topic: Part-time County Attorney;
Conflicts.

Modified by 544

Digest: Neither an assistant county attorney nor his partners may represent private clients in civil matters relating to the county or in criminal matters; extreme caution must be exercised by them in representing clients in unrelated matters who regularly do business with the county.

Code*: DR 5-105(C); 5-105(D);
DR 9-101; EC 5-1; EC 8-8;
EC 9-2; EC 9-3; EC 9-6;
Canon 9

QUESTION

Where a part-time assistant county attorney is permitted to continue his private practice, may he or his partners represent clients in criminal matters, represent clients in matters involving the county or represent, in matters not involving the county, clients who are employed by the county, subject in substantial matters to the regulatory jurisdiction of the county or regularly do business with the county?

OPINION

If permitted by law to have a private practice, there is no ethical prohibition preventing an assistant county attorney from forming a partnership for the private practice of law, provided it is understood that where one partner is disqualified in a particular matter his partners and associates are similarly disqualified for where it is improper for one member or associate of a firm to represent a client in a particular matter, it is improper for all other members and associates of that firm to represent that client. DR 5-105(D); N.Y. State 254 (1972); N.Y. State 214 (1971); N.Y. State 118 (1969); N.Y. State 82 (1968); N.Y. State 40 (1966).

Where the office of the county attorney performs, or is charged by statute with the duty to perform, duties as a prosecutor or those closely related thereto, such as attorney for the sheriff, the district attorney, the director of probation and the superintendent of the county penitentiary, an assistant county attorney cannot properly represent defendants in criminal matters in his private

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practice. Since the part-time county attorney is in the eyes of the public a representative of the people on many occasions, his representation of a defendant in a criminal matter would give the appearance of impropriety in violation of Canon 9. See also, EC 9-2; DR 9-101; Drinker, Legal Ethics 118 (1953); ABA Inf. 922 (1966); N.Y. State 130 (1970); N.Y. State 171 (1970); N.Y. State 241 (1972).

An assistant county attorney cannot represent private clients in matters involving the county because of his conflict of interest. EC 5-1; EC 5-14; DR 5-105(C); N.Y. State 247 (1972); ABA 112 (1934); N.Y. County 350 (1939); N.Y. County 450 (1957); N.Y. County 549 (1967); Drinker, Legal Ethics 111, 112 (1953). As the public interest is involved, the county is unable to give its consent, and so there is no need to consider whether it would be proper to represent such client with the consent of both parties. N. Y. State 247 (1972); N.Y. State 218 (1971); N.Y. State 213 (1971); Drinker, Legal Ethics 120 (1953). For the reasons set forth in the first paragraph of this opinion, no partner or associate of the assistant county attorney could undertake such representation.

The ethical propriety of a part-time assistant county attorney representing a private client in matters not related to the county, where the client is employed by the county, subject in substantial matters to the regulatory jurisdiction of the county or regularly does business with the county depends on the circumstances of each particular case. The representation would be proper only if it were clear that there were no conflict between his duties to the public and his duty of undivided loyalty to his client and provided there were a total absence of "even the appearance of professional impropriety." Canon 9; EC 9-2; EC 9-3; EC 9-6; EC 8-8; DR 9-101; N.Y. State 252 (1972). A lawyer holding public office should shun the acceptance of a retainer if, under all the circumstances, his conduct will adversely affect public confidence in the office holder or in the legal profession. ABA Inf. 1182 (1971). The representation should be declined if it might appear to a layman that the client because he is represented by an assistant county attorney in matters unrelated to the county, is receiving special consideration in his transactions with the county.
