



## Committee on Professional Ethics

Opinion #260-9/15/72 (42-72)

Topic: Public Defender; Private clients;  
Conflict of Interest;  
Appearance of Impropriety.

Modified by #587 (1987)

Digest: Improper for any Deputy Public  
Defender to represent privately  
defendant who has previously  
sought Public Defender assistance  
in the matter.

Code: Canon 9; DR 2-103(D); DR5-101(A)  
DR6-101(A)(3); DR 9-101(B); EC  
5-1; EC 8-8, EC 9-3.

### QUESTION

1. Is it the duty of a part-time deputy public defender to attend to all public defender matters assigned to him before handling matters of his private clients, regardless of their relative importance?

2. Is it proper for a part-time deputy public defender, who previously represented a public defender client, subsequently to represent such client as a private attorney if the case is transferred to another court to which he is not assigned?

3. If a defendant whose case has been assigned to and accepted by one part-time deputy public defender thereafter requests another part-time deputy public defender to represent him in the matter as his private attorney, and if the matter never would have been referred to such other part-time deputy public defender in his official capacity, may the latter accept such employment? Would the answer be different if the defendant subsequently was rejected as unqualified to receive public defender services, or if he never approached the assigned deputy public defender for an interview and his eligibility never was determined?

4. Has a public defender an ethical obligation to comply with the request of a person who qualifies for public assistance that he assign a particular part-time deputy public defender to his case?

### OPINION

1. The relative priority with respect to services between public defender matters and those of the private clients of a part-time deputy public defender depends in the first instance upon the stipulated conditions of the deputy public defender's employment. In the absence of such provision the deputy public defender must determine the relative importance and urgency of matters in which he is engaged regardless of

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whether they involve public defender or private clients and in no case may he neglect a legal matter entrusted to him. DR 6-101 (A)(3). However he must exercise great care not to permit his personal or professional interests to influence or appear to influence his judgment with respect to the priority to be assigned as between his public defender and private matters. Canon 9; DR 5-101 (A); EC 5-1. If the time required for the fulfillment of his ordinary duties as a deputy public defender prevents the proper performance of his duties to his private clients, he has the choice of terminating his employment as deputy public defender or declining to handle personally the private matters which would conflict with his public obligation.

2. It would not be proper for a deputy public defender who previously represented a defendant in his official capacity subsequently to represent him as his private attorney upon the transfer of the case to a court to which the deputy public defender is not assigned. A lawyer should not use or appear to use the public defender's office as feeder for his personal law practice. DR 2-103(D); ABA Inf. 1112 (1969). Canon 9 provides that "a lawyer should avoid even the appearance of professional impropriety." In N.Y. State 165 (1970) this Committee held that for a part-time public defender to accept compensation from a client who previously had sought public defender representation but was rejected as ineligible would be improper upon the ground that it might create the impression upon the public that the office of the public defender was being used for the personal advantage of the members of the public defender's staff. The same suspicion would attach in the case where the defendant had originally been accepted as a public defender client, but the matter was transferred to a court to which the deputy public defender was not assigned and he thereupon accepted compensation for continuing his services. DR 9-101(B); EC 9-3.

3. It would similarly be objectionable for one deputy public defender to handle a case as a private attorney for a client who had originally been represented as a public defender client by another deputy public defender, even though the matter never would have been referred to the former in his official capacity. It is true that N.Y. State 165 (1970) involved the proposed private retainer of "that same lawyer" whose services were previously sought as a matter of public assistance. However for this purpose, the various deputy public defenders are all part of a single law unit, the public defender's office, and are subject to the same rule as would apply to a partnership, namely that "if it is improper for one member or associate of a firm to represent a client in a particular matter, then all members and associates of that firm are also subject to the same prohibition." N.Y. State 227 (1972); N.Y. State 254 (1972); N.Y. State 214 (1971); ABA 104 (1934). Cf. United States v. Standard Oil Co. 139 F. Supp. 345 (SDNY 1955); People v. Wilkins, 28 N.Y. 2d 53 (1971).

It makes no difference whether the client who originally sought public defender services was accepted and assigned to a deputy public

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defender or was rejected as unqualified to receive such services, or requested another deputy public defender to represent him privately before his eligibility had been determined. In each case, the client's initial contact was with the public defender's office, and any associate of that office who thereafter accepted the matter as a privately compensated attorney would be open to and would expose the public defender's office to the suspicion of impropriety.

N.Y. State 173 (1970) is not to the contrary. We held there that a part-time public defender may be privately retained to defend a criminal case, but in that case the client had never requested the services of the public defender's office.

4. The authority of a public defender with respect to the assignment of matters to deputy public defenders does not involve a question of professional ethics.

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