



Committee on Professional Ethics

Opinion #278 - 1/25/73 (59-72)

Topic: Part-time County Attorney;
Conflicts

Digest: Circumstances under which
partners and associates
of part-time county attorney
may represent private
clients in Family Court.

Code: EC 5-15; DR 5-105;
Canon 9

QUESTION

Under what circumstances may a part-time county attorney or his partners or his associates represent private clients in Family Court?

OPINION

Where the office of the county attorney performs, or is charged by statute with the duty to perform, duties as attorney for an agency or department that has an interest in a Family Court proceeding, such as the Social Welfare Department, the Sheriff or the Probation Department, or the matter is criminal or quasi-criminal in nature, a county attorney cannot properly represent private clients in his private practice in such matters. N.Y. State 257 (1972); N.Y. State 218 (1972); N.Y. State 171 (1970); Drinker, Legal Ethics 118 (1953); Canon 9; EC 5-15; DR 5-105.

On the other hand where the nature of the proceedings is such that the office of the county attorney does not perform and is not charged with a duty to perform services with respect thereto, a county attorney will not have a conflict and it would not be improper for him to represent private clients in Family Court if there is no appearance of impropriety. Canon 9.

Because the relations of partners in a law firm are such that neither the firm nor any member or associate thereof may accept any professional employment which any member of the firm cannot properly accept, DR 5-105(D), N.Y. State 257 (1972), N.Y. State 203 (1971), no partner or associate of a part-time county attorney may represent private clients in Family Court if the part-time county attorney is prohibited from so representing such clients.

In the event a statute or a governmental board of ethics prohibits such appearance in Family Court, then, of course, such prohibition controls. In the event the Code or standards set forth by bar association ethics committees are more restrictive, then they control the lawyer's conduct. N.Y. State 272 (1972).
