



Committee on Professional Ethics

Opinion #424 - 11/25/75 (99-75)

Topic: County legislator; criminal practice

Clarified by #431

Digest: Improper for part-time county legislator to represent defendant in the same county when the prosecution is by the district attorney who is funded by the legislature

Code: Canon 9
EC 8-8, 9-1, 9-2; 9-6

QUESTION

May a part-time county legislator represent defendants in a criminal court when the prosecution is by the district attorney who receives funding from the county legislature of which the legislator is a member?

OPINION

Although it is highly desirable that attorneys, being uniquely qualified to do so, should serve as legislators (EC 8-8), due care must be exercised by attorneys who are part-time legislators so to conduct their private practice as to avoid any appearance of professional impropriety (Canon 9). EC 9-1 asserts the necessity that "the public have faith that justice can be obtained through our legal system", and EC 9-6 mandates that lawyers "encourage respect for the law and for the courts". The public may reasonably conclude that the office of the district attorney represents the authority of the state. It would be fundamentally unsound to place the office of prosecutor in any position whereby the public may reasonably conclude that there is even the temptation to compromise the state's interests in the outcome of any proceeding.

Since the office of the district attorney must petition the county legislature for its funds, an adversarial relationship between the individual county legislator and the district attorney's office should be avoided since the impression of impropriety is inevitably created in the eyes of the public. N.Y. State 141 (1970); N.Y. State 326 (1974); EC 9-2; cf. ABA Inf. 1126 (1969) and N.Y. State 226 (1972).

Accordingly, it is improper for a part-time county legislator to represent a defendant in a court where the adversary is the district attorney whose funding is directly determined by the county legislature.
