



Committee on Professional Ethics

Opinion #432 - 5/20/76 (19-76)

Topic: District attorney as a member of grievance committee.

Digest: Improper for a district attorney to serve as a member of grievance committee of a bar association.

Code: DR 1-103(B)
Canon 1

QUESTION

May a district attorney serve on a grievance committee of a bar association?

OPINION

Because there is an irreconcilable conflict between the duty imposed by statute upon a member of a grievance committee and the duty placed by statute upon the district attorney, it would be improper for a district attorney to serve as a member of a grievance committee. Section 90(10) of the Judiciary Law provides that:

"Any statute or rule to the contrary notwithstanding, all papers, records and documents upon . . . any complaint, inquiry, investigation or proceeding relating to the conduct or discipline of an attorney or attorneys, shall be sealed and be deemed private and confidential..."

On the other hand, Section 700(1) of the County Law provides in pertinent part:

"It shall be the duty of every district attorney to conduct all prosecutions for crimes and offenses cognizable by the courts of the county for which he shall have been elected or appointed..."

Finally, Section 90(7) of the Judiciary Law provides in pertinent part:

"In addition to the duties prescribed by section seven hundred of the county law, it shall be the duty of any district attorney within a department, when so designated by the justices of the Appellate Division . . . to prosecute all proceedings for the removal or suspension of attorneys. . ."

The above cited statutes clearly place a district attorney who sits on a grievance committee in a situation which is untenable; as a member of the grievance committee he is bound to confidentiality whereas as district attorney he has an obligation to prosecute. Cf. Canon 1; DR 1-103(B).