



Committee on Professional Ethics

Opinion #543 - 5/ 24/82 (21-82)

Topic: Quasi-judicial hearing officer; limitations on practice.

Digest: Restrictions on practice of Small Claims Real Property Tax Assessment Hearing Officers same as those on judges.

Code: EC 8-8;
DR 5-105(D).

QUESTION

May an attorney who serves as a hearing officer in proceedings to review small claims real property tax assessments (or lawyers in his firm) represent private clients in such proceedings in the same jurisdiction in which the hearing officer hears cases?

OPINION

New York State, effective January 1, 1982, instituted a Special Proceeding for Small Claims Real Property Tax Assessment Review which will be heard by hearing officers. Panels of hearing officers, who need be qualified as to the subject matter but who need not be attorneys, will be established in each county of the state, and individual hearing officers will review decisions of Boards of Assessment Review where the amount in tax reduction cannot exceed \$750. The decision of a hearing officer is binding on the parties, who will be a property owner and the local tax assessor, with review available through an Article 78 proceeding.

The Committee is mindful of the need for attorneys to be able to participate in programs such as small claims real property tax assessment reviews. In N.Y. State 380 (1975) we held that an attorney who occasionally acts as an arbitrator in a small claims program of a local court should not be held to the standards of a part-time judge and could therefore practice before the same small claims part. However, there is an important difference between an attorney acting as an arbitrator where two private parties are involved and an attorney acting as a hearing officer where one of the parties is always a governmental entity.

In N.Y. State 365 (1974) we held that a lawyer who is a member of the Administrative Appeals Board of the New York State Motor

Vehicle Department is subject to the same restrictions imposed on judges and that neither the lawyer nor other lawyers in his firm could represent private clients at a hearing conducted by a motor vehicle referee or in any other action against the Department of Motor Vehicles. See also N.Y. State 292 (1973) concerning a member of a zoning appeals board.

As a hearing officer, the attorney will be called upon to review decisions of the local tax assessors and the Board of Assessment Review and to render impartial judgments. As an attorney representing private landowners, the attorney would be an advocate whose duty would be to challenge such decisions in the non-impartial setting of an adversary proceeding. Furthermore, the interests of private clients may conflict with some of the decisions an impartial hearing officer may reach. Even if such decisions are to possess no precedential value, the integrity and impartiality of the assessment review procedures should not be clouded by such dual-role inconsistencies. See EC 8-8.

If the hearing officer cannot accept professional employment, then neither can a partner or associate in the same law firm. DR 5-105(D). The restriction on the private practice of such hearing officer is limited to the county or counties in which the attorney performs such function and to appearances in tax assessment matters in such counties. See N.Y. State 484 (1978).

For the reasons stated the question posed is answered in the negative.
