

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

Opinion #33 - 9/22/66 (13-66)

Topic: Conflict of Interest, Public Defender

Digest: Proper for Assistant Public Defender to represent defendant with interests which conflict with defendant represented by Public Defender

Canon: Former Canon 4

QUESTION

The office of Public Defender has recently been created in one of the Counties of this State. His job is to represent indigent defendants. The Public Defender resides in the County but generally carries on the practice of law in an adjoining County.

Occasionally the Public Defender cannot represent certain defendants because of a conflict of interest and it has been suggested that the office of Assistant Public Defender be created and an individual be appointed to this position to serve only when, because of a conflict of interest, the Public Defender cannot serve. The Assistant Public Defender would be paid a fee only when working in his official capacity would not be practicing out of the same office as the Public Defender, and would have no connection with the Public Defender outside of similarly serving as a public defender.

It is asked whether there would be any ethical conflict in the Public Defender representing one or more defendants and the Assistant Public Defender representing one or more additional defendants where a conflict of interest exists between the defendant or defendants represented by the Public Defender and the defendant or defendants represented by the Assistant Public Defender.

OPINION

This Committee is of the opinion that it would be professionally proper for the Assistant Public Defender to represent a defendant or defendants having interests which conflict with the interests of a defendant or defendants represented by the Public Defender. The fact that the Public Defender and Assistant Public Defender occupy similar positions as public defenders is of no moment in light of the high responsibility resting on the Bar to defend indigent persons. See Canon 4 of the Canons of Professional Ethics; Opinion 55 of the Opinions of the Committee on Professional Ethics of the American Bar Association.