

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

OPINION

In the opinion of this Committee the classified listing is not objectionable nor is the alphabetical listing. However, we find objectionable the addition to the word "attorney", or "lawyer", the words "general law practice", "industrial real estate attorney" or any other like description. (See our Opinion No. 16 - 11/1/65 (5-65))

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Opinion #19 - 12/1/65 (7-65) Topic: Conflict of Interest.
Law Practice of Part-Time Judge.

Digest: Lawyer should not practice in court in which he sits as part-time judge.

Canon: Judicial Canon 31

QUESTION

The Charter of an upstate New York city provides for an election of a City Judge for a four-year term. Further provision is made for the Mayor of the city to appoint an Acting City Judge to serve with all the powers and jurisdiction of the City Judge in the event the City Judge is absent or unable to act. Whereas the elected City Judge receives an annual salary fixed by the City Council, the Acting City Judge is paid at the rate of \$10.00 per day and is paid only for those days when he actually serves as Acting City Judge.

Is it proper for an Acting City Judge to appear for and represent clients in City Court in connection with matters to be heard before the regular City Judge or before another Acting City Judge?

OPINION

Canon 31 of the Canons of Judicial Ethics provides that one holding judicial position should not practice in the Court in which he is a Judge, even when presided over by another Judge. The Canon cautions that a Judge who practices law "must be scrupulously careful to avoid conduct in his practice whereby he utilizes or seems to utilize his judicial position to further his professional success." It is recognized that some counties and municipalities are unable to pay adequate compensation for a competent Judge and, therefore, in such instances, the private practice of law by one holding a judicial position is permitted. However, in no event should an attorney practice in the court in which he sits as Judge. The fact that an Acting City Judge serves only on a part-time basis is not a sufficient reason for relaxing the application of canon 31 since it could be argued that his judicial position is being utilized to further his professional success.

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