

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

Opinion #29(a) - 1/26/67 (6-67) Topic: Impropriety Between Counsel and Bench.
Associate of Part-Time Judge.

Digest: Improper for an associate to appear before Justice of the Peace where other Justice of the Peace is partner in the associate's law firm.

Canon: Judicial Canons 13, 30

QUESTION

In reply to an inquiry, this Committee issued Opinion #29 - 5/20/66 (14-65), which stated it would be ethically improper for an associate in a law firm to appear before a Justice of the Peace in a town where the other Justice of the Peace is a partner of the law firm with which the attorney is associated. The inquirer now calls the Committee's attention to an Informal Opinion of the Attorney General dated January 9, 1940 which concludes that similar acts are not in violation of the law.

Although certain professional acts are not in violation of the law, may the same acts be in violation of the Canons of Professional Ethics?

OPINION

The Informal Opinion of the Attorney General concluded that the proposed representation would not involve any violation of law. This same Opinion also specifically stated that the "propriety of such practice in the same town is certainly open to question". It is this Committee's opinion that although such representation may not violate the law, and we do not pass upon questions of law, it would never the less be ethically improper since not conducive to building public confidence in justice of the peace courts.

Opinion #30 - 5/20/66 (4-66) Topic: Conflict of Interest.
Political Activity of Judges.

Digest: Improper for judge not to resign before becoming a candidate for non-judicial office.

Canon: Judicial Canon 30

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QUESTION

Should Canon 30 of the Canons of Judicial Ethics be amended to permit a part-time judicial officer to run for non-judicial office and retain his judicial office at the same time?

OPINION

On the premise that advancement in the public service may be denied to young men who may not retain minor judicial office and at the same time run for political non-judicial office, this inquiry has been directed to possible modification of Canon 30 of the Canons of Judicial Ethics. The present text of the Canon is:

"30. Candidacy for Office

"A candidate for judicial position should not make or suffer others to make for him, promises of conduct in office which appeal to the cupidity or prejudices of the appointing or electing power; he should not announce in advance his conclusions of law on disputed issues to secure class support, and he should do nothing while a candidate to create the impression that if chosen he will administer his office with bias, partiality or improper discrimination.

"While holding a judicial position he should not become an active candidate either at a party primary or at a general election for any office other than a judicial office. If a judge should decide to become a candidate for any office not judicial, he should resign in order that it cannot be said that he is using the power or prestige of his judicial position to promote his own candidacy or the success of his party.

"If a judge becomes a candidate for any judicial office, he should refrain from all conduct which might tend to arouse reasonable suspicion that he is using the power or prestige of his judicial position to promote his candidacy or the success of his party.

"He should not permit others to do anything in behalf of his candidacy which would reasonably lead to such suspicion."

It is also urged that minor judicial offices are part-time, poorly paid, and so limited geographically and in jurisdiction, as to involve neither large numbers of the electorate nor issues of popular consequence.

In Matter of Furey, 17 AD 2d 983, Canon 30 has recently been construed adversely to one who sought to retain the office of Village Police Justice while engaging in a campaign to promote his candidacy for the non-judicial office of Assemblyman.

The Committee recommends no modification of the Canon. This Committee believes that the Canon as presently drawn defines that conduct best calculated to advance the interests of justice and public confidence in its administration.

This Committee believes that the appearance of justice may often be as important as justice itself, and that the prohibition called in question is a salutary one, not to be abandoned.

The Committee believes that the canon dictating resignation from judicial office in order to run for non-judicial office, is in the end but an acknowledgement of that course of conduct which would be adopted by the thoughtful lawyers under such circumstances, even if that canon were silent.

This Committee can formulate no better statement of its opinion than is to be found in the words of the canon itself, "If a judge should decide to become a candidate for any office not judicial, he should resign in order that it cannot be said that he is using the power or prestige of his judicial position to promote his candidacy or the success of his party."

Opinion #31 - 6/8/66 (7-66)

Topic: Advertising.
Publication of Biographical Data.

Digest: Improper for lawyer's services to
be touted by Savings and Loan Assn.

Canon: Former Canons 27, 29

QUESTION

The inquirer, an attorney, states that he is Chairman of the Board of a local Savings and Loan Association. The Association has retained public relations counsel and is about to launch an aggressive advertising campaign. As part of the project it plans to feature pencil sketches with accompanying biographical data of its officers and directors. The biographical data accompanying the pencil drawing of inquirer includes his name, a title "Chairman of the Un-Bored" and is as follows:

"He doesn't find much time these days for the skiing and hiking he enjoys so much as leisure-time diversion, but....spends most of his waking hours as an attorney here in...., and most of what used to be his 'leisure' is now devoted to serving as Chairman of the Board of Directors of The...Savings & Loan. Why?will answer, 'The principal purpose of The.... is to help local families save part of their income. Its principal service is helping local families to buy and own their homes. Both of these activities help our community