

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

William E. J. Connors, Justice, of the Columbia County Court, very nicely summed the problem up in People of the State of New York v. McDonald 8 Misc.2d 50, 167 N.Y.S.2d 394, 396: "The question of when a Judge should disqualify himself is generally one of conscience. Some Judges disqualify themselves only when in their own mind their connection with the case is such that they feel they cannot be fair and unbiased. The practice which impresses me is that a Judge should disqualify himself whenever there might be the slightest impression upon the part of a litigant that his decision might be swayed by his connection with the case or his interest in the case, for it is important in the administration of justice not only that our Courts be presided over by Judges who are fair and impartial, but it appears to this Court that it is equally as important that litigants believe that they are being tried by a Judge who is fair and impartial and not influenced by any personal interest in the case". The responsibility is on the Judge not to sit voluntarily in a case unless he is both free from bias and from the appearance thereof.

It is, therefore, the opinion of this Committee that there is no reason why a District Attorney or Assistant District Attorney may not practice before a Justice of the Peace or a Judge of any Court merely because of a friendly or cordial relationship between the Court and Counsel. If this were not the case, there would be very few Judges able to sit on the Bench. However, when the relationship becomes such that the Court cannot render an impartial decision as required by Canons 5, 13, 26 and 33 of the Canons of Judicial Ethics, the Judge should voluntarily disqualify himself so as to avoid any chance or thought or suspicion of impropriety or influence.

Of course, it would not be proper for the District Attorney or Assistant District Attorney to represent a defendant being prosecuted by his office.

Opinion #56 - 3/31/67 (9-67)

Topic: Intermediary.

Digest: Lawyer may not be retained by corporation to represent third party chiropractors.

Canon: Former Canon 35

QUESTION

A corporation is engaged in handling personal injury and malpractice claims for chiropractors, receiving retainers from the chiropractors for which the corporation arranges for defense, adjustment and payment of the claims. The service is not provided as an incident to insurance coverage. A lawyer has been asked to defend some of these cases and asks whether it is proper for him to be retained by the corporation rather than by the chiropractor who is the defendant. He also asks whether the answer would be different if he handled only trial preparation or trial, and left settlement negotiations and payment to the corporation or the chiropractor himself.

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OPINION

Canon 35 of the Canons of Professional Ethics provides as follows:

"The professional services of a lawyer should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and lawyer. A lawyer's responsibilities and qualifications are individual. He should avoid all relations which direct the performance of his duties by or in the interest of such intermediary. A lawyer's relation to his client should be personal, and the responsibility should be direct to the client. -----

"A lawyer may accept employment from any organization, such as an association, club or trade organization, to render legal services in any matter in which the organization, as an entity, is interested, but this employment should not include the rendering of legal services to the members of such an organization in respect to their individual affairs."

As to both questions, it is this Committee's opinion that it would not be ethically proper for the lawyer to represent these chiropractors unless he is retained directly by the chiropractors without intervention by the corporation. See the following opinions: Assn. of the Bar of the City of N.Y. No. 38 (association of tenants), No. 92 (hairdressers' association), and No. 135 (nurses' association); and Opinion No. 363 of the N.Y. County Lawyers' Assn. (school teachers' association).

Opinion #57 - 3/31/67 (11-67)

Topic: Conflict of Interest.
Part-Time Judge Representing
Defendants in Other Courts.

Modified by 228

Digest: Part-time police justice may defend clients in other courts so long as client is not charged with violation of ordinance within jurisdiction of police justice.

Canon: Judicial Canons 24, 31