

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

QUESTION

Is it proper for an Acting Police Justice of an incorporated Village, which position pays no salary, who continues in the private practice of law, to represent defendants in criminal matters in a court other than the court to which he has been appointed?

OPINION

Canon 24 of the Canons of Judicial Ethics provides as follows:

"A judge should not accept inconsistent duties nor incur obligations, pecuniary or otherwise, which will in any way interfere or appear to interfere with his devotion to the expeditious and proper administration of his official functions."

Canon 31 of the Canons of Judicial Ethics provides that a judge who is not forbidden to practice law, and does practice, "is in a position of great delicacy and 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."

"He should not practice in the Court in which he is a judge, even when presided over by another judge, or appear therein for himself in any controversy."

This Committee finds no impropriety in a Police Justice who presides over an inferior court defending persons charged with offenses before another Justice Court, District Court, Supreme Court or Appellate Court, even though privately retained for compensation as long as the defendant is not charged with violating an ordinance of the community in which the attorney acts as Justice. Such practice is permitted by Canon 31 of the Canons of Judicial Ethics, subject to the limitation that the Police Justice so practicing shall scrupulously avoid conduct "whereby he utilizes or seems to utilize his judicial position to further his professional success".

Opinion #58 - 5/23/67 (10-67)

Topic: Firm Name.
Attorney Named to Public Office.

Modified by 233

Digest: Lawyer named to public office may keep his name in former firm so long as not misleading to clients and others, and firm does not appear before that body.

Canon: Former Canon 33

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QUESTION

Question has been raised as to whether an attorney named to public office in New York City is prohibited from keeping his name in that of his former law firm and on its stationery. The attorney has represented that his firm has not and will not appear in any matter "remotely related" to the City Department with which he will serve, that his firm "will not appear before any agency of the city or prosecute any claim against the city in the courts" and that as to those few firm matters presently pending in the courts against the city he would "waive any claim for fees, and the firm name will not continue as counsel on said matters."

OPINION

The Committee is of the opinion that, assuming the effectuation of the representations made by the attorney, it would not be professionally improper to keep his name in that of his former law firm and on its stationery. However, it is to be emphasized that an attorney may not permit the use of his name in that of his former firm for the purpose of misleading his former clients or others into the belief that he is still active in respect to matters handled professionally by the firm. Canon 33 of the Canons of Professional Ethics; Opinion 97 of the Opinions of the Committee on Professional Ethics of the American Bar Association; Opinion 651 of the Opinions of the Committee on Professional Ethics of The Association of the Bar of the City of New York. Accordingly, if the attorney's official position requires his full time it should be indicated where his individual name appears on his firm letterhead, either that he is retired from the firm, or that he is on "leave of absence". Informal Decision 620 of the Standing Committee on Professional Ethics of the American Bar Association.

If the attorney's firm hereafter does represent a client in a matter with the city or have other official contacts with city officers the possibilities of conflict of interest and of valid or invalid assumptions of improper influence detrimental to the Bar would make it incumbent for the attorney to withdraw his name immediately from that of the firm and from its stationery. (See Opinion 332 of the Committee on Professional Ethics of The Assn. of the Bar of the City of New York.) Furthermore, as this Opinion 332 indicates, the practice of retaining the name of an attorney in the firm name and on its stationery where the attorney has entered government service is not to be encouraged, even if it does not specifically violate the Canons of Ethics.

Opinion #59 - 5/23/67 (18-67)

Topic: Legal Advice Without Attorney-Client Relationship.

Digest: Lawyer may serve as counsel to corporation or as chief executive officer, but he should not provide legal advice to subscribers of a service.

Canon: Former Canons 35, 47