

NEW YORK STATE BAR ASSOCIATION  
Professional Ethics Committee Opinion

OPINION

EC 2-26 provides in pertinent part:

"in furtherance of the objective of the bar to make legal services fully available, a lawyer should not lightly decline proffered employment."

EC 2-31 provides in pertinent part:

"Full availability of legal counsel requires both that persons be able to obtain counsel and that lawyers who undertake representation complete the work involved."

DR 2-108 (A) provides as follows:

"A lawyer shall not be a party to or participate in a partnership or employment agreement with another lawyer that restricts the right of a lawyer to practice law after the termination of a relationship created by the agreement, except as a condition to payment of retirement benefits."

See also ABA 300 (1961); ABA Inf. 910 (1966); N.Y. City 688 (1945); cf. ABA Inf. 521 (1962).

A covenant restricting a lawyer after leaving the partnership from fully practicing his profession appears to this Committee to be an unwarranted restriction on the right of the lawyer to choose his clients in the event they seek his services and an unwarranted restriction on the right of the client to choose the lawyer he wishes to represent him. Accordingly, the Committee is of the opinion that it would be improper for a partnership agreement to contain such a restrictive covenant, except as a condition to payment of retirement benefits.

Opinion #130 - 3/19/70 (9-70)      Topic: Part-time District Attorney  
Conflict of Interest

Digest: Not proper for a part-time  
district attorney to represent  
a person certified as an addict  
under the Mental Hygiene Law in  
habeas corpus proceeding

Code\*: Canon 9  
EC 9-2  
DR 9-101

QUESTION

A part-time district attorney, who is permitted to practice in a county in New York, asks whether it would be ethically proper for him to represent in a habeas corpus proceeding a client who had been committed as a drug addict under the New York State Mental Hygiene Law. The People of the State are a party to the proceeding.

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OPINION

There are three sections of the New York State Mental Hygiene Law under which persons may be committed as drug addicts and committed to the control of the New York State Rehabilitation Commission. Under section 206 of the Mental Hygiene Law a person who is an addict may petition on his own initiative to be certified as an addict. Section 208 permits a person who has either been found guilty or pleaded guilty to a felony to be committed under this statute. Section 210 permits such commitment where the person involved has been indicted or charged with a felony and consents to commitment to the Narcotics Rehabilitation Commission. In each of these situations, it is the opinion of the Committee that it would be improper for the district attorney of the county where the relator in the habeas corpus proceeding is committed to represent him. The purpose of the habeas corpus proceeding in this situation is to have the court determine the validity of the original commitment. Since this is so, an unseemly impression may be created that the district attorney is a representative of both the People of the State and the relator. (Canon 9, EC 9-2, DR 9-101, Drinker, "Legal Ethics", p. 118, ABA Inf. 922 (1966).)

This is the opinion of the Committee even though the habeas corpus proceeding may be brought in a county other than the one in which the original indictment or proceedings had occurred.

Opinion #131 - 4/9/70 (1-70)

Topic: Process serving agency;  
Conflict of interest;  
Appearance of impropriety;  
Solicitation of business;  
Business interests

Digest: An attorney may not use an agency for the service of process in which he has an interest without divulging same to client.

Code\*: EC 5-19; 2-8; 2-9  
DR 5-101 (A); 2-103

QUESTION

May an attorney use, on behalf of his client, a process serving agency in which he has a pecuniary interest?

OPINION

In his representation of a client, a lawyer may retain a process service agency in which he has a pecuniary interest provided the client is fully informed and consents to the arrangement. (EC 5-19, DR 5-101 (A).)

If the lawyer is in a position to influence or control the operation of the agency, it should not be used to serve process on clients of the lawyer.

The use of such agency to solicit business for the attorney is prohibited. (EC 2-8, 2-9, DR 2-103.)