

NEW YORK STATE BAR ASSOCIATION  
Professional Ethics Committee Opinion

OPINION

It is improper for a firm to designate as associates lawyers practicing with an out-of-state law firm with which it is not affiliated. cf. Drinker, Legal Ethics 205 (1953); N.Y. City 684 (1946), ABA Inf. 1097 (1969). It follows that listing the names of such lawyers on its stationery is prohibited irrespective of whether the jurisdictional limitations of their admittance are indicated.

In connection with the formation of a partnership DR 2-102(D) provides:

"A partnership shall not be formed or continued between or among lawyers licensed in different jurisdictions unless all enumerations of the members and associates of the firm on its letterhead and in other permissible listings make clear the jurisdictional limitations on those members and associates of the firm

not licensed to practice in all listed jurisdictions; however, the same firm name may be used in each jurisdiction."

The above quoted rule recognizes that partnerships may properly be formed between lawyers admitted to practice in different states, if there is no use of a misleading name or other representation which would create a false impression as to the professional position or privileges of a member not locally admitted. See N.Y. City 684 (1946); N.Y. City 700 (1946); ABA 316 (1967).

Opinion #145 - 7/2/70 (28-70)

Topic: Appearance of impropriety;  
Conflict of Interest;  
Confidences of Client

Digest: Office holder should abstain from participating in a matter handled by his former law firm when he had been a firm member.

Code\*: Canon 9  
EC 4-5, 4-6, 5-1, 9-2  
5-14; 5-15  
DR 4-101

QUESTION

A lawyer is an elected member of a City Council and a partner in a law firm in that city. A corporate client of his law firm sought a franchise from the City Council to operate in the City and the lawyer abstained from voting on grounds of a conflict of interest. A franchise was granted to his firm's client, however, as a result of the Council's vote. A motion to rescind the franchise is about to be brought to a vote in the Council and the lawyer, who will have left his present firm when the issue of rescission comes to the floor for a vote, has asked whether in view of the change of his relationship to the client, he is still ethically bound to abstain from voting. As a partner of his law firm, the lawyer has been privy to confidential information concerning the client in general and privy to specific and confidential information material to litigation which has arisen as a result of the original grant of the franchise to the client.

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OPINION

A lawyer holding public office has a duty to abstain from voting or otherwise participating in a matter in which his firm was involved at a time when he was a member of the firm, irrespective of whether the client had been represented by him or by one of his partners or associates. The lawyer's withdrawal from the firm or termination of the attorney-client relationship does not free him from any ethical obligations to which he would otherwise have been subject.

Canon 9 provides that "[a] lawyer should avoid even the appearance of professional impropriety." EC 9-2 recognizes that "a lawyer should determine his conduct by acting in a manner that promotes public confidence in the integrity... of the legal system and the legal profession."

It would be violative of these two principles for the lawyers not to disqualify himself from participating in the decision under the circumstances set forth in the question.

Furthermore, a lawyer should not undertake to act as a public official in a matter which might require him to utilize confidential information received from a former client or to which he was privy as a member of the firm representing the client. EC 5-1 provides:

"The professional judgment of a lawyer should be exercised, within the bounds of the law, solely for the benefit of his client and free of compromising influences and loyalties.<sup>1</sup> Neither his personal interests, the interests of other clients, nor the desires of third persons should be permitted to dilute his loyalty to his client."

A lawyer's obligation "to preserve the confidences and secrets of his client continues after the termination of his employment." EC 4-6 (See also EC 4-5, DR 4-101 and EC 5-14 and 5-15).

Opinion #146 - 7/27/70 (25-70)    Topic: Conflict of Interest for Part-time Judge.

Digest: A judge of a court having jurisdiction to try misdemeanors and felony hearings may not practice criminal law in a higher court.

Code\*: EC 9-2, 9-6  
DR 9-101 (A)  
Canons of Judicial Ethics  
No. 31