

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

tice to the situs of his court, his connections with the justices of the other court or the other town, or other relevant factors, that his appearance before the court of the other town would give rise to an appearance of impropriety, prejudice or favoritism. The same principle would apply to the partners and legal associates of the justice.

The Committee's opinion is influenced by desirability of having lawyers act as Justices of the Peace and the practical difficulties that would arise if, because of such limited public service, they and their partners and associates were excluded from all practice before Justices of the Peace. The situation would be different in the case of courts of wider jurisdiction.

Opinion #151 - 8/28/70 (33-70)

Topic: Application for position of attorney for school district

Digest: An attorney may properly submit an application for position as attorney for a school district

Code*: DR 2-103 (A)

QUESTION

A school district advertises that the Board of Education will fill a vacancy in the position of attorney and requests interested parties to submit a written letter of application. Is it ethically proper for a lawyer to make such application?

OPINION

In ABA 74 (1932) it was held that an application for appointment or election to a municipal office which can only be filled by an attorney was not the type of soliciation of professional employment at which former Canon 27 was directed and that such an application by an attorney was ethically proper.

This opinion was approved in ABA 244 (1942) and specifically held to be still valid in ABA Inf. 941 (1966).

Lawyers willing to accept public office are limited in number, and if the municipality asks lawyers generally to let it know who is interested in accepting such a position, it is a matter of community service for the lawyer to make known his willingness. Of course, the application should be dignified, should give only the information asked for, and should not indulge in unsolicited, self-laudatory statements. Bidding for the position would, of course, be improper.

This committee approves and adopts the ABA opinion.

Opinion #152 - 9/8/70 (32-70)

Topic: Conflict of Interest
Appearance of Impropriety
District Attorneys

Digest: Assistant district attorney's firm representing a defendant in another county

NEW YORK STATE BAR ASSOCIATION
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Code*: Canon 9
DR 9-101
EC 9-2

QUESTION

An assistant district attorney is a member of a law firm with offices in two counties. May the firm represent defendants in other counties in which the partner is not an assistant district attorney?

OPINION

It is the opinion of the Committee that it would be improper for the firm to represent defendants in other counties.

In N.Y. State 99 (1969) it was held that it was improper for an assistant district attorney to represent an accused in an adjoining county because of possible conflict of interest.

In addition, Canon 9 specifically states that a lawyer should avoid even the appearance of professional impropriety. (See also D.R. 9-101, E.C. 9-2).

It is the opinion of the Committee that it would give the appearance of impropriety for the district attorney or an assistant district attorney to represent the people in one county and the firm of which he is a partner or associate to represent defendants in criminal matters in another county.

Opinion #153 - 9/8/70 (38-70) Topic: Advise to Client

Digest: Lawyer has duty to advise client of reputation of person with whom client is about to do business

Code*: EC 2-26; EC 2-32;
DR 2-110 (C) (1) (e);
EC 5-1; EC 7-8

QUESTION

Does an attorney have a duty and obligation to advise his client of the reputation of a person or business entity with whom the client is about to enter into a business relationship?

OPINION

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. 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."