

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

conduct in his practice whereby he utilizes or seems to utilize his judicial position to further his professional success."

It is the Committee's opinion that in a letterhead used for private practice, it is improper to show a present or former public office held by the lawyer.

Opinion #165 - 11/6/70 (41-70) Topic: Public Defender;
Appearance of Impropriety.

Modified by #587 (1987)

Digest: A part-time Public Defender may not be privately retained to represent an accused who initially contacted the Public Defender's office but was found unqualified for aid.

Code*: Canon 9
EC 9-2
DR 2-103 (D) (1)
DR 2-104 (A) (2) and (A) (3)

QUESTIONS

Is it ethically proper for an attorney who is employed part-time as a county Public Defender to be retained in his private practice by an accused who initially contacted the Public Defender's office but was found unqualified for public assistance.

Do any of the following considerations alter the ethical result:

1. Advising the accused that he is entitled to select counsel of his own choosing.
2. Requiring the accused to execute an affidavit attesting to the voluntary employment by him of the Public Defender's private office.
3. Obtaining permission from the court in which the case is pending for the Public Defender's private office to act on behalf of the accused.

OPINION

Canon 9 provides:

"A lawyer should avoid even the appearance of professional impropriety."

EC 9-2 provides:

"When explicit ethical guidance does not exist, a lawyer should determine his conduct by acting in a manner that promotes public confidence in the integrity and efficiency of the legal system and the legal profession."