

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinions

OPINION

It is assumed that nothing in the law prevents private practice by such a judge.

A number of opinions of this committee and of the Ethics Committee of the American Bar Association have held that one holding a position of this nature may not with propriety practice criminal law in other courts. ABA 242 (1942); N.Y. State 146 (1970); N.Y. State 146(a) (1970). Such practice would weaken the confidence of the public in the impartiality and objectivity of the judiciary and would be subject to the suspicion that the judge was using the prestige of his position to further his private practice. Canon 9, and see EC 9-2 and 9-6, and Judicial Canon 31.

This committee has ruled that a justice of the peace may practice criminal law in courts outside the territorial jurisdiction of his own court because these positions pay little compensation, the conflict of interest is minor, and it would be difficult to induce lawyers to accept such positions unless they were permitted such practice. The committee is of the opinion that the judge of a city court, even part time, is not such a position in respect to criminal law, and that it would be improper for him to engage in such practice, even outside the city.

However, with respect to civil law matters, considering the limited jurisdiction of the court and the salary paid the judge, the committee is of the opinion that the conflict of interest is minimal and that the judge of such a court may properly engage in private practice in civil cases before higher courts in the city or before other courts outside the city.

Opinion #182 - 3/23/71 (12-71)

Topic: Lawyer referral plan for narcotic cases.

Digest: Lawyer may properly participate in referral panel for narcotic cases provided plan is approved by appropriate bar association.

Code*: EC 2-15
DR 2-103(C); 2-103(D) (3);
2-105(A) (2).

QUESTION

A civic organization plans to establish a referral service which will maintain a panel of attorneys qualified to handle narcotic cases. Each panel member will negotiate his own fee with each client. There will be no solicitation by the civic organization, which will act only in the event a person seeking assistance requests that he be referred to an attorney. May an attorney properly participate as a panel member?

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinions

OPINION

EC 2-15 provides:

"The legal profession has developed lawyer referral systems designed to aid individuals who are able to pay fees but need assistance in locating lawyers competent to handle their particular problems. Use of a lawyer referral system enables a layman to avoid an uninformed selection of a lawyer because such a system makes possible the employment of competent lawyers who have indicated an interest in the subject matter involved. Lawyers should support the principle of lawyer referral systems and should encourage the evolution of other ethical plans which aid in the selection of qualified counsel."

DR 2-103(C) provides in pertinent part:

"A lawyer...may request referrals from a lawyer referral service operated, sponsored, or approved by a bar association representative of the general bar of the geographical area in which the association exists and may pay its fees incident thereto."

DR 2-103 provides in pertinent part:

"(D) A lawyer...may cooperate in a dignified manner with the legal service activities of any of the following, provided that his independent professional judgment is exercised in behalf of his client without interference or control by any organization or other person:

"(3) A lawyer referral service operated, sponsored, or approved by a bar association representative of the general bar of the geographical area in which the association exists."

DR 2-105(A) (2) provides:

"A lawyer may permit his name to be listed in lawyer referral service offices according to the fields of law in which he will accept referrals."

These provisions of the Code of Professional Responsibility reaffirm prior American Bar Association opinions holding that a local bar association may form a panel of attorneys who are willing to serve thereon provided the plan is supervised by the local bar association, no individual attorney's name is advertised, and such publicity as is necessary is directed toward apprising the public of the method and means by which the plan is carried out. ABA 205 (1940); ABA 227 (1941); ABA 291 (1956).

Accordingly, participation in the proposed panel is not improper, provided the lawyer referral service is approved by a bar association representative of the general bar of the geographical area in which the service is to be provided.