

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinions

Opinion #184 - 4/21/71 (11-71)

Topic: Conflict of Interest;
Appearance of Impropriety;
Part-time Village Attorney-
Prosecutor.

Modified by 544

Digest: An attorney who is a part-time village attorney and acts as a special prosecutor for the District Attorney's office should not represent private clients as defendants in criminal matters in any court.

Code*: Canon 9; DR 9-101,
EC 9-2, 9-6.

QUESTION

A lawyer serves as Village Attorney and because of this he is from time to time appointed a special prosecutor by the District Attorney to prosecute violations in the Village Justice Court. May he represent private clients on criminal charges in courts where he does not act as prosecutor?

OPINION

It is the opinion of the committee that it would be improper for him to represent private clients on criminal charges in any court.

This committee and the American Bar Association Ethics Committee have considered many varying fact situations similar to this. Opinions have been nearly unanimous in ruling that, since a prosecutor represents the people of the state, it is improper for him to represent individual clients charged with criminal violations. See: N.Y. State 171 (1970), 152 (1970), 130 (1970), 99 (1968), 82 (1968), 52 (1968), 40 (1966), 149 (1970); ABA 16 (1929), 30 (1931), 34 (1931), 77 (1932), 118 (1934), 142 (1935); ABA Inf. 1045 (1968); Drinker, "Legal Ethics" p. 118.

Canon 9 states that a lawyer should avoid even the appearance of professional impropriety. See also DR 9-101, EC 9-2, 9-6.

Acting as a prosecutor on one case on one day, and appearing the next day even in a different court representing a private citizen who had been charged with a criminal act or violation of law would give rise to an appearance of an improper conflict of interest.

Opinion #185 - HAS BEEN WITHDRAWN - THEREFORE, UNPUBLISHED