

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinions

OPINION

EC 8-8 provides that:

"A lawyer who is a public officer, whether full or part-time, should not engage in activities in which his personal or professional interests are or foreseeably may be in conflict with his official duties."

In ABA 186 (1938), it was held that a county attorney, acting only in civil matters, should not represent a defendant in a criminal proceeding. The opinion states in part:

". . . for the county attorney charged with public duties to accept employment adverse to this public employer puts the county attorney in an unseemly situation likely to destroy public confidence in him as a public officer, and bring reproach to his profession."

The crucial fact is that the prosecuting attorney's client is the city. It is improper for an attorney, at the same time that he represents a client, to sue that client in an unrelated matter on behalf of another. EC 5-15; DR 5-105(A), (B) and (C). Consent would generally be unavailing in such a situation; and, in addition, unavailing in this case since the city cannot give consent. N.Y. State 143 (1970).

Accordingly, such representation would be improper.

Opinion #219 - 12/20/71 (51-71)

Topic: Solicitation of work from counsel for a corporation whose stock is held by soliciting attorney

Digest: An attorney should not solicit employment

Code*: DR 2-103(A); (C)

QUESTION

May an attorney who owns stock in a corporation listed on a stock exchange write counsel for the corporation, advising that he is a stockholder and wishes to handle any legal work the corporation might have in his city or to become local counsel for the corporation?

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OPINION

DR 2-103(A) provides:

"A lawyer shall not recommend employment, as a private practitioner, of himself, his partner, or associate to a non-lawyer who has not sought his advice regarding employment as a lawyer."

Except for a lawyer referral service, a lawyer shall not request others to recommend him as a lawyer. DR 2-103(C). The fact that the lawyer is a shareholder of the corporation is not an exception to the rule prohibiting solicitation and accordingly, said solicitation is improper.

Opinion #220 - 12/20/71 (52-71)

Topic: Contribution by attorney to non-profit organization to provide bail for indigent persons

Digest: Attorney may contribute to non-profit organization directed by non-attorneys whose primary purpose is to provide bail for indigent persons

Code*: DR 5-103(B);
DR 2-101(A) and (B)

QUESTION

May an attorney financially contribute to a non-profit organization organized and directed by non-attorneys whose primary purpose is to provide bail for indigent persons charged with a crime?

OPINION

In ABA 259 (1943) it was held, despite former Canon 42 (the predecessor of DR 5-103(B)), that the Committee on War Work of the American Bar Association could properly finance costs in cases for indigent servicemen from funds provided for that purpose, and a lawyer member of that Committee could, with propriety, subscribe to such a fund. No reason appears why, absent any improper motive, a lawyer may not contribute to a non-lawyer administered non-profit organization, the purpose of which is to post bail for indigent persons charged with crime. Such action would not constitute the stirring up of litigation, nor would it place the lawyer in a position of having an interest in litigation which might influence his professional judgment.

The making of a contribution to the described organization should not be publicized in any manner, DR 2-101(A) and (B); in any event, an attorney making such a contribution, should not permit that fact to constitute an inducement for professional employment. Cf. Insurance Law Sec. 331-a(4); N.Y. State 213 (1971).