NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinions

OPINION

It is not ethically improper for an attorney representing a judgment creditor to charge the judgment debtor a reasonable fee for services in preparing a satisfaction of judgment provided that such preparation is not required by law. cf. CPLR 5020 which requires that the judgment creditor or his attorney execute and deliver a satisfaction piece upon payment of the judgment. An attorney may, of course, charge his client, the judgment creditor, a fee for the preparation of the instrument and need not look to the judgment debtor. It would appear that no question of conflict of interest is involved. EC 5-19.

In the event the judgment debtor prepares the instrument there, of course, may be no charge therefor made by the creditor's attorney.

Opinion #226 - 1/26/72 (59-71)

Topic: Conflict of Interest. Public Officers.

Digest: City Councilman not barred from practicing in Police Court or City Court.

Code*: DR 5-101; DR 5-105(A); DR 8-101 (A)(2); EC 5-15.

QUESTION

Is it proper for an elected member of a city council to practice law in the Police Court and City Court of his city notwithstanding that the salaries of the judges of those courts are set by the city council?

OPINION

DR 8-101(A) provides:

> "A lawyer who holds public office shall not...use his public position to influence, or attempt to influence, a tribunal to act in favor of himself or of a client."

However, the mere possibility that a judge may be influenced by the lure or fear of a councilman's vote on the salaries of judges of his court does not pose so evident a threat to the impartial administration of justice as to warrant barring the councilman from practicing law in his court, assuming that the city council does not appoint the members of the court.

In a case where a client and the municipality or one of its agencies are the contesting parties, or the validity of a city ordinance is in question, a conflict of interest would exist, for then it would be the duty of the lawyer to contend for the best result for his client and at the same time as a member of the city council, to do his utmost to protect the interests of the city. In such case, as well as appearance before an administrative agency of the city, the councilman would be disqualified from representing the private client. DR 5-101; DR 5-105(A); EC 5-15. See N.Y. State 141 (1970) and N.Y. State 110 (1969). To a lesser extent there may be a conflict in Police Court matters, but this will depend on the facts of each case. In ABA Inf. 1126 (1969) it was stated:

"So long as the attorney, although a part-time state legislator, does not use his legislative position to try to change, amend, modify, repeal or alter the existing laws for the benefit of his clients, it would

not appear that he would be acting improperly in defending persons accused of violating criminal laws of his state. But, should he feel that his representation of persons accused of crime does not permit him to have a free, impartial and unbiased attitude toward the enactment of criminal laws for the benefit of the public as a whole, then this should dictate that he not endeavor to serve both as a legislator and represent those accused of crime."

Opinion #227 - 1/26/72 (1-72)

Clarified by 492

Topic: Confidences of a Client. Prosecuting Attorney. Former Client.

Digest: District Attorney may not normally prosecute defendant represented by Assistant District Attorney at Arraignment.

Code*: EC 4-6; EC 9-6; DR 5-105(D)

QUESTION

Does the appointment of an Assistant District Attorney, who represented a defendant at his arraignment, disqualify the entire District Attorney's staff from prosecuting the defendant?

OPINION

This Committee has previously held that an attorney may not properly defend a client against a charge which was under investigation by the District Attorney's Office while the attorney was a part-time Assistant in such office. N.Y. State 52 (1967). We also held that a former School Board Attorney could not represent a citizens group to question matters for which he had had a substantial responsibility while the Board's attorney. N.Y. State 176 (1971). The Committee also held that an attorney, who has changed law firms, may not represent the adverse party in a transaction handled by his former firm while he was there even though he was unaware of the details of the transaction. N.Y. State 180 (1971).

It appears clearly improper for a lawyer to switch sides in litigation. He must preserve the confidences of his client even after termination of employment. EC 4-6.

This Committee has held that, if it is improper for one member or associate of a firm to represent a client in a particular matter, then all members and associates of that firm are also subject to the same prohibition. DR 5-105(D); N.Y. State 40 (1966); N.Y. State 82 (1968); N.Y. State 118 (1969); N.Y. State 203 (1971); N.Y. State 214 (1971). A District Attorney's office is comparable to a legal partnership. N.Y. State 118 (1969).