



Committee on Professional Ethics

Opinion #300 - 8/17/73 (26-73) Topic: Draft board member; Conflicts.

Digest: Improper for lawyer member of draft board to defend client charged with Selective Service Act violation.

Code: Canon 9
EC 8-8; 9-1; 9-2.

QUESTION

May a lawyer member of a local draft board represent a defendant in a federal criminal prosecution charging a Selective Service Act violation, where the defendant is registered with a draft board in another county?

OPINION

It would be improper for a lawyer member of a local draft board to represent a defendant charged with a Selective Service Act violation, irrespective of the location of the draft board with which his prospective client is registered.

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". Such a conflict may well arise where a lawyer draft board member undertakes to defend an individual charged with a Selective Service Act violation. For example, as a board member acting in an administrative or quasi-judicial capacity, it could well be his duty to apply or interpret a statute or administrative regulation which it would be his obligation to challenge in defending a client charged with the Selective Service law violation.

Even if no actual conflict should exist in a particular case, any such dual role would nevertheless be improper because it would tend to lessen public confidence in the integrity and impartiality of the Selective Service system and its administration. Such representation would thus be violative of Canon 9; EC 9-1 and EC 9-2, relating to the lawyer's obligation to "promote public confidence in our system and in the legal profession" and to "avoid even the appearance of professional impropriety". To accept employment under such circumstances would give an "appearance of impropriety even if none exists". Cf. N.Y. State 132 (1970). It is the duty of lawyers who accept public office or employment "to remain above suspicion even at personal financial sacrifice". N.Y. State 292 (1973).
