



Committee on Professional Ethics

Opinion #308 - 11/16/73 (36-73)

Topic: Acting City Court Judge;
claims against city.

Digest: Acting city court judge
may not represent a
claimant against the
city.

Code: Canon 9; EC 9-2
Judicial Code: Canon 2

QUESTION

May an acting city court judge with part-time duties represent a party in a lawsuit against the city that will be tried in Supreme Court?

OPINION

It would be improper for the acting city court judge to represent a claimant against the city even though the proceeding is in the Supreme Court. His position as a city court judge is inconsistent and in conflict with his prosecuting clients' claims against the city.

Canon 2 of the Code of Judicial Conduct provides that a judge should avoid the appearance of impropriety in all his activities, and should conduct himself at all times in a manner that promotes public confidence in the integrity of the judiciary. A judge pro tempore is required to comply with this Canon. "Code of Judicial Conduct: Compliance with the Code of Judicial Conduct." Similarly, Canon 9 of the Code of Professional Responsibility mandates that "A lawyer should avoid even the appearance of professional impropriety."

Although under certain rare circumstances it may be permissible for a lawyer who is a city employee to represent a plaintiff in an action against the city, ABA Inf. 855 (1965), this is not such a case. Even in the absence of an express rule, a lawyer should be guided by the admonition in EC 9-2 that "when explicit ethical guidance does not exist, a lawyer should determine his conduct by acting in a manner that promotes public confidence in the integrity and efficiency of the legal system and the legal profession." As stated in ABA Inf. 1182 (1971):

"While these provisions do not require a lawyer to refuse a retainer in the situations you mention, they should cause a lawyer to shun acceptance of a retainer if, under all circumstances, his conduct will adversely affect public confidence or his conduct might result in his professional duties to his client being at variance with his official duties as a legislator. Certainly a lawyer cannot, consistently with the guidance given under Canon 9, accept a retainer where its acceptance will give the appearance of professional impropriety."

Part-time judges are permitted to engage in private practice to the

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extent permitted by law before tribunals of which they are not a member provided the circumstances do not give rise to any possible appearance of impropriety, prejudice or favoritism. N.Y. State 252 (1972). As stated above, the circumstances here present make the representation improper. An acting city court judge has the same restrictions placed upon his private practice as a part-time judge. N.Y. State 263 (1972).
