



Committee on Professional Ethics

Opinion #365 - 10/25/74 (44-74) Topic: Quasi-judicial officer;
Limitation on practice of
officer, partners and associates.

Digest: Restrictions imposed on practice
of part-time member of Administra-
tive Appeals Board, his partners
and associates, before Motor
Vehicle Department are same as
judge.

Code: EC 8-8
DR 5-105(D)

QUESTION

May a lawyer who is a member of the Administrative Appeals Board of the New York State Motor Vehicle Department or his partners or associates, represent private clients at a hearing conducted by a motor vehicle referee or in an Article 78 proceeding or other action against the Department of Motor Vehicles?

OPINION

It is a well established ethical principle that no partner or associate of a law firm may accept any professional employment which any member of the firm cannot accept. DR 5-105(D); N.Y. State 203 (1971); N.Y. State 280 (1973); N.Y. State 342 (1974). The question then presented is whether the lawyer, who is the part-time appeals officer, may appear or practice in the circumstances stated.

Because the Administrative Appeals Board hears appeals from denials, suspensions or revocations by the Commissioner of Motor Vehicles of licenses, certificates, permits or other privileges with respect to motor vehicles and reviews referee's decisions a member is a quasi-judicial officer and is subject to the restrictions imposed upon members of the judiciary. N.Y. State 327 (1974); N.Y. State 337 (1974). Accordingly, the proposed representation would be improper.

A lawyer's dual role as an appeals officer and attorney representing interests adverse to the agency would tend to lessen public confidence in the integrity and impartiality of the Motor Vehicle Department. The lawyer could be placed in a position where his professional interests as an advocate conflict with his quasi-judicial responsibilities. Thus the lawyer's representation of clients before the Motor Vehicle Department would appear contrary to the spirit of EC 8-8 which provides, in pertinent part:

"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 N.Y. State 300 (1973) it was held to be improper for a lawyer

member of a draft board to represent clients charged with Selective Service Act violations. There it was stated, and it seems applicable here, that:

"Even if no actual conflict should exist in a particular case, such dual role could 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 the lawyers who accept public office or employment 'to remain above suspicion even at personal financial sacrifice'. N.Y. State 292 (1973)."

The Code of Judicial Conduct in the section entitled "Compliance with the Code of Judicial Conduct" provides in part:

"Anyone, whether or not a lawyer, who is an officer of a judicial system performing judicial functions, including an officer such as a referee in bankruptcy, special master, court commissioner, or magistrate, is a judge for the purpose of this Code..."

While the lawyer may derive relatively little remuneration from serving six to eight days per year on the Appeals Board, it does not change the result. As stated in N.Y. State 228 (1972).

"With every benefit there is a corresponding burden. If one is not willing to undertake the burden, he should not accept the benefit of the office."

Therefore the question presented is answered in the negative.
