



Committee on Professional Ethics

Opinion #380 - 3/26/75 (10-75)

Topic: Practice before a small claims part of a local court by attorney who occasionally serves as arbitrator in the same small claims part.

Digest: Not improper for an attorney who occasionally voluntarily serves as a non-paid arbitrator in a small claims part of a local court to practice before the same small claims part.

Code: Canon 8, 9
EC 8-8, 9-2, 9-6

QUESTION

May an attorney who occasionally serves as an arbitrator in a small claims part of a local court practice before the same small claims part?

OPINION

The small claims part of a local court is now well established as a court to which many come for resolution of civil claims. It is generally conducted at night, enabling claimants and defendants alike reasonable access to the courts without undue hardship. One of the most outstanding features of such a small claims court is the contribution made by the Bar of New York.

Attorneys preside over consensual arbitration trials. A party is not compelled to arbitrate; he may insist upon a judge. Small claim arbitrators, serving gratuitously dispense justice by effecting settlement, if possible, or rendering a final determination, without a record, under relaxed rules of evidence. Thus, the New York public at large has been able to resolve a preponderance of smaller controversies through the accessibility to a small claims part of the court without a corresponding and over-burdening expenditure of time and public money.

Under such circumstances, an attorney is acting as an arbitrator and not as a judge and should not be held to the standards of a part-time judge. An attorney who, in keeping with the established judicial system of the State, serves gratuitously as an arbitrator in aid of the court, and as his primary means of livelihood engages in the practice of law in the courts of the State, including the small claims part in which he occasionally sits as an arbitrator, is not ethically barred from practicing in the small claims part of the court. ABA 161 (1936); ABA Inf. 639 (1963).

The attorney, however, should be guided by ABA 161 (1936) which provides in pertinent part:

"He should, of course, refrain from acting in one capacity in any matter concerning which he has acted directly or indirectly in the other and scrupulously avoid conduct whereby he utilizes or seems to utilize his judicial services to further his professional success."

See Canon 8, Canon 9, EC 8-8; EC 9-2 and EC 9-6 for guidelines which the small claims arbitrator should follow.
