



Committee on Professional Ethics

Opinion #418 - 10/7/75 (80-75)

Topic: Part-time county legislator;
conflict.

Digest: Improper for attorney,
part-time county legislator,
to represent party in court
in same county when opposing
party is represented by
county attorney appointed by
county legislature.

Code: Canon 9
EC 8-8, 9-1, 9-2, 9-6

QUESTION

May a part-time county legislator represent parties in family court in the same county where the opposing party is represented by the county attorney, who is appointed by the county legislature of which the legislator is a member?

OPINION

Although it is highly desirable that attorneys, being uniquely qualified to do so, should serve as legislators (EC 8-8), due care must be exercised by attorneys who are part-time legislators so to conduct their private practice as to avoid any appearance of professional impropriety (Canon 9). EC 9-1 asserts the necessity that "the public have faith that justice can be obtained through our legal system", and EC 9-6 mandates that lawyers "encourage respect for the law and for the courts". The public may reasonably conclude that a legislature appointed county attorney is to some degree beholden to a member of that legislature. Accordingly, were a member of the county legislature to appear in court in opposition to the county attorney, or his assistant, an appearance of impropriety would arise, and "public confidence in the integrity...of the legal system and the legal profession" (EC 9-2) would be eroded. See, N.Y. State 326 (1973).

Accordingly, it is improper for a part-time county legislator to appear in opposition to the county attorney, or an assistant county attorney in the county in which he is a legislator where the county attorney is appointed by the legislature. Cf. N.Y. State 226 (1971).
