



Committee on Professional Ethics

Opinion #513 - 9/ 17/79 (32-79)

Topic: Conflict of interest;
Part-time city attorney;
Political activities of
partner.

Digest: Improper for part-time city
attorney having prosecu-
torial duties to continue
to serve as such where his
partner assumes the chair-
manship of local political
committee.

Code: EC 5-21, 7-31, 8-8, 9-2 and
9-6;
DR 5-105(A) and (D).

QUESTION

May a part-time city attorney, having the duty to prosecute violations of local traffic and city ordinances, continue to serve as such where his partner assumes the chairmanship of a local political committee?

OPINION

The view that there is a basic incompatibility between the duties of a public prosecutor and partisan politics has long been embraced by this Committee. See, e.g., N.Y. State 476 (1977), N.Y. State 273 (1972), N.Y. State 272 (1972), N.Y. State 264 (1972), N.Y. State 241 (1972) and N.Y. State 217 (1971). This view, drawn from Ethical Considerations and not from Disciplinary Rules, accommodates the unique role of the public prosecutor to perform, not only as an adversary seeking to convict, but as a lawyer bound to uphold the ends of justice. As explained in EC 7-13, a special duty exists because:

"(1) the prosecutor represents the sovereign and therefore should use restraint in the discretionary exercise of governmental powers, such as in the selection of cases to prosecute;
(2) during trial the prosecutor is not only an advocate but he also may make decisions normally made by an individual client, and those affecting the public interest should be fair to all"

The potential for conflict between a lawyer's personal and professional interests is also viewed as another reason for finding the roles of public prosecutor and politician ethically incompatible. Thus, in similar contexts, we have often referred to the admonition set forth in EC 8-8:

"A lawyer who is a public official, 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."

Our prior opinions also may be seen to reflect the principles articulated by EC 9-2 that a lawyer should act "in a manner which promotes public confidence" and by EC 9-6 which requires that he "strive to avoid not only professional impropriety but also the appearance of impropriety." Hence, in N.Y. State 476, supra, we observed that "the rule ... is intended to eliminate any suspicion that the broad discretion accorded public prosecutors might be abused for reasons of partisan politics." Similarly, in N.Y. State 272, supra, we explained that "[p]rosecuting attorneys who take an active part in ... political activities ... or otherwise lend the prestige of their office to any political party incur the risk of public disenchantment with the entire judicial system." Cf., ABA 192 (1939) ("[A]n attorney holding public office should avoid all conduct which might lead the layman to conclude that the attorney is utilizing his public position to further his professional success or personal interests.").

While the aforementioned opinions dealt with the political activities of the prosecutor himself, in our view, their rationale is equally applicable to the political activities of the prosecutor's partner. The appearance of impropriety is not substantially lessened where the political activities are those of the prosecutor's partner. Indeed, from a certain perspective, the appearance of impropriety may be enhanced and the prosecutor's motivations made more suspect by the implication that the relationship is an attempt to evade the clear prohibition against the prosecutor's political involvement. Cf., N.Y. State 476, supra, with N.Y. State 511 (1979) and N.Y. State 502 (1979).

For the reasons stated, the question posed is answered in the negative.
