

NEW HAMPSHIRE BAR ASSOCIATION

Representation of Clients in District Court  
by a Retired Judge of That Court

Ethics Committee Advisory Opinion  
10/12/82

FACTS:

The Committee has been asked if there is an ethical problem with a retired district court judge from a small rural community accepting criminal cases which will necessitate the judge's appearance in the same district court?

RESPONSE:

No, provided the provisions of Canon 9 are complied with. Under DR 9-101 (A) "A lawyer shall not accept private employment in a matter upon the merits of which he has acted in a judicial capacity." Furthermore, under DR 9-101 (C) "A lawyer shall not state nor imply that he is able to influence improperly or upon irrelevant grounds any tribunal..." Also see EC 9-3, "After a lawyer leaves judicial office or other public employment, he should not accept employment in connection with any matter which he has had substantial responsibility prior to his leaving, since to accept employment would give the appearance of impropriety even if none exists."

In view of the small town situation and further in view of the recent association with the local court; whenever the attorney believes that a prospective client has contacted him in order to obtain an advantage in the Court, the attorney should state that his prior judicial capacity will not affect the disposition of the pending matter.

We note that the Code of Judicial Conduct provisions applicable to part-time judges apply to "retired judges eligible for recall to judicial service." Section C., Compliance with the Code of Judicial Conduct. Section A., Compliance with the Code of Judicial Conduct states that a part-time judge should not practice law in the court on which he serves.