

FORMAL OPINION NO. 17*

The Committee has been asked whether it is ethically proper for a Magistrate or Judge of a Police, justice of Peace or Probate Court to also serve as Prosecuting Attorney, Deputy Prosecuting Attorney, Attorney General or Assistant Attorney General.

The question must be categorically answered no. Such activity is not ethically proper.

Judicial Canon 24 provides:

"A judge should not accept inconsistent duties; nor incur obligations, pecuniary or otherwise, which will in any way interfere or appear to interfere with his devotion to the expeditious and proper administration of his official functions."

Professional Canon No. 6 says in part:

"It is unprofessional to represent conflicting interests . . ."

Canon 29 imposes this obligation upon every lawyer:

"He should strive at all times to uphold the esteem, maintain the dignity of the profession and to improve not only the law, but the administration of justice."

Canon 32 declares, among other things:

"But above all, a lawyer will find his highest honor in a deserved reputation for fidelity in private trust and to public duty. . . ."

A Prosecuting Attorney, his deputies and the Attorney General with his assistants are expected to act as advocates for the public. A judicial capacity or function rightly commands the unsplintered fealty of an arbiter. One person cannot logically, morally or ethically act as both official arbiter and public advocate. Nor can one's public office be so compartmentalized that one member can function in a judicial capacity while the principal or another assistant wears an advocate's hat.

"The positions are inherently antagonistic and this would be so irrespective of Canon 6. No question of consent can be involved as the public is concerned and it cannot consent." (Opinion 16, Committee on Professional Ethics and Grievances, American Bar Association.)

"If the profession is to occupy that position in public esteem which will enable it to be of greatest usefulness, it must avoid not only all evil, but must likewise avoid the appearance of evil." (Opinion No. 49, Committee on Professional Ethics and Grievances, American Bar Association.)

For a lawyer-public official to engage in both judicial and adversary functions, even on wholly unrelated causes presents such a direct conflict of function and purpose as to destroy public confidence in the incumbents and bring reproach to the profession.

*Undated opinion. See, DR 5-105 and Canon 9, Idaho Code of Professional Responsibility; I.S.B. Opinion 23 (undated opinion). Judicial reform legislation prohibits judges from practicing law.