

PROPRIETY OF JUDGE HANDLING CRIMINAL CASES

The Committee has been requested to pass on the following question:

"Is it ethically proper for a Justice of the Peace, Police Magistrate or Probate Judge to either prosecute or defend a criminal action in another court on a case with which such officer has had no previous connection?"

In Idaho the practice of law by an inferior court judge, who is also an attorney, is not forbidden, presumably because counties and municipalities are not able to pay adequate living compensation for competent judges. In such cases one who practices law is in a position of great delicacy and must be scrupulously careful to avoid conduct in his practice whereby he utilizes or seems to utilize his judicial position to further his professional success (Canon 31 of Judicial Ethics).

In Opinion No. 17 of this Committee it was held to be improper 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 even on wholly unrelated cases, for the reason there exists in such situations a direct conflict of function and purpose so as to destroy public confidence in the incumbents and bring reproach to the profession.

The Canons of Professional and Judicial Ethics recognize the traditional duty of lawyers and judges to conduct themselves so as to preserve public confidence in the integrity of our courts. A lawyer who accepts judicial office becomes a direct medium for administering justice. His duty is correspondingly increased.

An inferior court judge is called upon to rule on questions of law and evidence in misdemeanor cases and conduct preliminary examinations in felony cases. His duty, which calls for a free and impartial judgment, very likely would be greatly interfered with if he is permitted, in another capacity, to accept employment by those who are or may be tried in felony cases, even though he did not conduct the examination. The private interests of the lawyer would destroy the unbiased judicial judgment essential to the administration of justice. His public and private duties would

be incompatible and would produce a serious conflict between the private interests of the judge as a lawyer, and of his clients, and his duties as a judge in adjudicating important phases of criminal processes in other cases. See, ABA Op. No. 242.

The amount of salary attached to a judicial office has no bearing upon the ethical questions involved in the conduct of that office.

The handling of civil cases by inferior court judges does not present the same ethical questions for in the usual civil case the public duties of a judge are not involved.

We conclude that it is not proper for an inferior court judge to either prosecute or defend a criminal action even though he has had no previous connection with the case in his judicial capacity.

*This is an undated opinion and is obsolete. Judicial reform legislation has prohibited judges from practicing law.