

LEI 89-03, CLARIFICATION OF PREVIOUS LEGAL ETHICS

INQUIRY 77-3, RE: MUNICIPAL JUDGES

The Committee on Legal Ethics has received a request for clarification of an earlier Opinion regarding municipal judges accepting court appointments. LEI 77-3 held that neither a municipal judge nor his associates or partners are ethically permitted to accept cases involving the representation of persons charged with criminal offenses.

This Opinion seeks to clarify LEI 77-3 in regard to cases which do not involve criminal charges. Specifically, the Committee on Legal Ethics finds that it is not a violation of either the Rules of Professional Conduct or the former Code of Professional Responsibility for an attorney to accept juvenile status offense cases (because they do not involve the representation of juveniles charged with acts which would be a crime if committed by an adult), juvenile abuse and neglect proceedings in which there is no related criminal conduct charged, and mental hygiene proceedings. Counsel for the Bar has previously advised, on an informal basis, that a municipal judge may represent a mental hygiene respondent when court appointed to do so. While the Committee notes that municipal judges are enabled, under West Virginia Code Section 8-10-2, to hear mental hygiene proceedings, the Committee specifically holds that in such a case, the municipal judge himself would be disqualified but his disqualification would not be imputed to his associates or partners.

The Committee holds that LEI 77-3 is still valid and in full force and effect. However, the exceptions noted in this Opinion are in keeping with the spirit of State ex rel Sowa vs. Summerville, 167 W.Va. 353, 280 S.E.2d 85 (1981). In that case, the West Virginia Supreme Court of Appeals specifically found "We are bound to guarantee availability of counsel for indigents. This precept, a foundation of our legal system, must override situations that may appear improper and violate Canon 9."¹ The Court went on to note, in Sowa, that the oath of admission to the Bar which is recommended by the American Bar Association and which was published at the end of the Canons of Professional Ethics, reads: "I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed."

For the foregoing reasons, the Committee on Legal Ethics holds that Municipal Judges and their associates and partners may ethically accept representation of juvenile status offenders, parties to juvenile abuse and neglect proceedings in which there are no related criminal charges and mental hygiene respondents. In the case of court appointments, the Committee on Legal Ethics specifically finds that an attorney not only may, but should, accept such representation.

¹The Code of Professional Responsibility, of which Canon 9 is a part, is no longer in effect in West Virginia. However, the Rules of Professional Conduct which superceded the Code as of January 1, 1989, continued to embrace the spirit of the former Code.