

*NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion*

Opinion #118 10/30/69 (15-69)

Topic: Practicing in partner's court

Digest: Village police judge sitting in judgement on criminal matters where partner is assistant District Attorney

Canons: Judicial Canons 4, 5, 13, 26 and 33

QUESTION

A and B are partners in a law firm. A is the Village Judge. His partner is employed as an assistant district attorney in the county encompassing the village where A serves as police judge.

Is it ethical for A to sit in judgement on criminal matters while his law partner is employed as an assistant district attorney in said county?

OPINION

It is ethically improper for a village police judge to in judgement on criminal matters in a jurisdiction where his partner is an assistant district attorney.

Section 471 of the Judiciary Law provides in part that, "a law partner of, or a person connected in the law business with a judge shall not practice or act as an attorney or counselor, in a court of which the judge is, or is entitled to act as a member..."

This section requires an attorney to decline employment, where his law partner acts as a justice of a court in which the litigation would be pending. The assistant district attorney could therefore not prosecute a case in this village court.

The district attorney's office is comparable to a legal partnership. Such a partnership, through the particular assistant district attorney, is (indirectly) associated with the judge of the village court. The district attorney and his assistants are therefore ethically prohibited from prosecuting any criminal case before this village court.

Canon 13 holds that a judge "should not suffer his conduct to justify the impression that any person can improperly influence him or unduly enjoy his favor..."

A judge must be circumspect in his relationship with the public at large; it is incumbent upon him to create the appearance of impartiality and fairness. If there is any question that a relationship may render an opinion partial, thereby violating canons 4, 5, 13, 26, and 33 of the Canons of Judicial Ethics the judge should voluntarily disqualify himself to avoid any chance of thought or suspicion of impropriety or influence.

Any doubt as to the relationship between counsel and the bench must be resolved in favor of the public at large.