

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

OPINION

If defense counsel is of the opinion that it is to the best interest of the minor that the proceedings be dropped, either because the outcome is unpredictable, or because he believes that the minor might suffer irreparable injury from undergoing a criminal trial even though acquitted, or for other cause, it would not be improper to advise the minor and his parents to execute the releases. However, the withdrawal of the complaint or dismissal without prejudice should be subject to the approval of the Court in which the criminal charge is pending, (Opinion No. 207, The Association of the Bar of the City of New York). Furthermore, to deliver or advise the execution of a release by or on behalf of a minor without complying with the requirements of Article 12 of the Civil Practice Law and Rules would be improper professional conduct. (See Matter of Shields, 16 App. Div. (2) 50) Defense counsel should, of course, explain fully to the minor and his parents what their respective rights and liabilities are and the reasons for his advice. It makes no difference whether or not defense counsel has been retained to represent the minor in the civil action as well as in the criminal proceeding.

Opinion #29 - 5/20/66 (14-65) Topic: Impropriety Between Counsel and Bench.
Associate of Part-time Judge.

Digest: Improper for an associate to appear before Justice of the Peace where other Justice of the Peace is partner in the associate's law firm.

Canon: Judicial Canons 13, 30

QUESTION

There are two Justices of the Peace in the Town of X in New York State. The senior member of the firm of Y & Z has been elected one of the two Justices of the Peace of this town. A lawyer employed by the firm of Y & Z asks as to the propriety of his practicing in the name of the firm before the other Justice of the Peace and also whether he can handle cases that he has procured himself and not as an employee of Y & Z before the other Justice of the Peace. He states that he realizes, of course, that he cannot practice before Mr. Y, who is the other Justice of the Peace.

Is it proper for an associate of a law firm to appear for and represent clients in Justice's Court when one of the two Justices is the senior member of the law firm by which he is employed?

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It would be ethically improper for an associate of a law firm to appear before a Justice of the Peace in a town where the other Justice of the Peace is a partner of the law firm with which the attorney is associated.

Canon 31 of the Canons of Judicial Ethics recognizes the "great delicacy" of the position of the part-time judge who is not forbidden from practicing law. This canon thus states that no part-time judge may properly practice in the court in which he is a judge, "even when presided over by another judge." The same principle should apply to those who are associated in practice with a part-time judge.

Section 471 of the New York Judiciary Law gives statutory force in this State to an important standard of general professional application. It provides, in pertinent part: "A law partner of, or a person connected in law business with a judge, shall not practice or act as an attorney or counsellor, in a court, of which the judge is, or is entitled to act as a member...." Although it was held in 1850 (Fox v. Jackson, 8 Barb. 355) that the analogous provisions of the Revised Statute applied only to courts of record, and thus not to Justice's Court, we believe that as an ethical matter the same rule should apply to members of the Bar practicing in a Justice's Court or any other court not of record.

In enacting the legislation which is now incorporated in Section 471, the Legislature of this State recognized that it was potentially destructive of confidence in our judicial system to permit one associated in practice with a judge, either as a partner or employee, to practice before any court of which the judge was a member. Public confidence in our courts and in the administration of justice depends not only on the avoidance of actual impropriety, but equally on the avoidance of the appearance of possible impropriety. A disappointed litigant must not be permitted to wonder whether he might have lost, not on the apparent weaknesses of his case, but rather because his opponent was represented by a partner or office associate of the other member of the Justice's Court in the same town. (Cf. Canon 13 of Canons of Judicial Ethics.)

Where the associate of the Justice of the Peace is asked to represent a plaintiff in a prospective Justice's Court civil action, the suit can still be brought in a Justice's Court in an adjoining town or city of the same county (Section 10, Justice Court Act). Where the prospective employment is to defend a matter, either civil or criminal, pending in Justice's Court in the town in which the Justice, with whom the attorney is associated, holds court, the employment should be declined. It would be equally improper to accept such employment either in the name of the firm or individually.