

**NEW YORK STATE BAR ASSOCIATION**  
**Professional Ethics Committee Opinion**

Opinion #39 - 12/20/66 (17-66) Topic: Conflict of Interest.  
Practice of Law by Part-Time Judge.

Digest: Part-time judge should not be employed in any matter which might be brought before court of which he is a member.

Canon: Judicial Canon 31

QUESTION

The acting Judge of one of the City Courts, governed by the City Court Act, has made a practice of issuing summonses in collection matters in the City Court signed by her as attorney for the plaintiff. If no one appears, a default judgment is entered and if someone appears and makes objection, she will have another lawyer substituted as attorney for plaintiff. Is this practice proper?

OPINION

This Committee is of the opinion that the foregoing conduct is not professionally proper. An acting City Court Judge is ethically barred from practicing in any fashion in any City Court, irrespective of who presides therein.

Canon 31 of the Canons of Judicial Ethics specifically provides:

"[A Judge] should not practice in the court in which he is a judge, even when presided over by another judge, or appear therein for himself in any controversy."

The purpose of this Canon is to preserve public confidence in the integrity of the courts. A Judge should not be employed in any matters which might be brought before the Court of which he is a member. See ABA Opinion No. 142.

Canon 31 of the Canons of Judicial Ethics also provides:

"If forbidden to practice law, [the Judge] should refrain from accepting any professional employment while in office."

This Committee does not pass on questions of law, but it may be helpful to call attention to the following:

Section 16 of the Judiciary Law provides:

"A judge shall not practice or act as an attorney or counsellor in a court of which he is, or is entitled to act as a member, or in an action, claim, matter, motion or proceeding originating in that court."

And Article IV, Section 20 of the Constitution of the State of New York provides in part:

"A Judge ... of a court for the City of New York established pursuant to section fifteen of this article who is elected or appointed after the effective date of this article may not:

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"(4) engage in the practice of law, act as an arbitrator, referee or compensated mediator in any action or proceeding or matter or engage in the conduct of any other profession or business which interferes with the performance of his judicial duties."

Opinion #40 - 12/22/66 (20-66) Topic: Conflict of Interest.  
Partner of Part-Time Dist. Atty.

Digest: Partner of part-time Asst. Dist.  
Attorney may not appear in defense  
of clients in traffic or mis-  
demeanor cases in same county  
where partner is Asst. Dist. Atty.

Canon: Former Canon 6

QUESTION

Is it proper for a lawyer to engage in the defense of traffic cases and minor misdemeanors before the Justice's Courts and before the Courts of Special Sessions in the same County in which his law partner serves on a part-time basis as an Assistant District Attorney engaged only in the prosecution of criminal matters in the County Court?

OPINION

Under Canon 6 attorneys may not represent conflicting interests without the consent of the clients after full disclosure and understanding by the clients of the consequences. The relationship between partners of a law firm is so close that the firm and all members thereof are precluded from accepting employment from which any one member is barred. ABA Opinions Nos. 33, 49, 50, 72, 103, 296 and ABA Informal Opinion 855. This is true irrespective of whether the lawyer involved serves the firm on a full or part-time basis. ABA Informal Opinion No. 674. Also, it is true irrespective of whether the lawyer is a partner or an associate of the law firm as both are engaged in carrying on the practice of the firm. ABA Opinion No. 306 and Informal Opinion No. 674.

Service by a lawyer in a public capacity carries the same restrictions as to conflict of interest as service for private clients. ABA Opinion No. 128.

In this case the Assistant District Attorney could not represent both the public interest and defendants being prosecuted by the District Attorney's office and his law partners and associates would also be precluded from doing so. ABA Opinion No. 142 and ABA Informal Opinion No. 284. No question of consent is involved because the public cannot give its consent to a conflict of interest. ABA Opinion No. 16.