

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

Opinion #65 - 10/16/67 (27-67) Topic: Conflict of Interest.
Partners of Judge.

Digest: Partners of acting village police court judge may not appear before regular judge of the court.

Canon: Judicial Canon 31

QUESTION

A, B & C comprise a law partnership. A is a Town Justice of the Peace. A village (wholly within the town) has a Police Justice Court with a Police Justice and Acting Police Justice. Frequently both the Police Justice and Acting Police Justice are out of town and on such occasions attorney A acts as an Acting Police Justice for the village.

Is it ethical for the A, B & C partnership to practice in the Village Police Justice's Court?

OPINION

It is ethically improper for any of the A, B & C partners or their associates to practice in the Village Police Justice Court.

Under section 60 of the Code of Criminal Procedure (as amended L 1967 Chapter 681 eff. September 1, 1967) a Justice of the Peace in a town which includes a village where the office of Police Justice is established "during the absence or inability of the Police Justice and Acting Police Justice, if any, to perform the duties of the office of the Police Justice, shall have jurisdiction to hear, try and determine charges of any offense other than a felony committed within that part of the village located within the town...".

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 counsellor, in a court, of which the judge is, or is entitled to act as a member,...." (underscore supplied).

Since this committee does not pass upon questions of law, we do not reach the legal question as to whether the statutory prohibition of section 471 of the Judiciary Law directly applies to a Police Justice Court. However, in Opinion #29 - 5/20/66 (14-65) we stated that "as an ethical matter" the same rule should apply to a Justice Court or other court not of record. Adopting the same reasoning we believe that since attorney A is "entitled to act as a member" of the Police Justice Court, A, B & C either as individuals or as a law partnership, are ethically prohibited from practicing before that court under Judicial Canon 31.

Public confidence in our courts cannot be maintained under a system which permits a person to act as a judge one day and on the next day to appear (or his law partner) as an advocate in the same court.