



## Committee on Professional Ethics

Opinion #280 - 1/25/73 (69-72)

Topic: Town Justice as Partner  
of Attorney for Town.

Digest: An attorney may not hold  
the position of town  
justice when his partner is  
charged with responsibility  
for criminal prosecution in  
behalf of the town, but may  
do so in absence of such  
responsibility or other  
conflict.

Code: Canon 7, 9  
EC 9-2, 9-6; DR 9-101(A)  
EC 8-8

Code of Judicial Conduct: Canon 3C

### QUESTION

May an attorney hold the position of part-time town justice and be a partner in a law firm which performs legal services for the town?

### OPINION

It is fundamental that a lawyer may in no event practice in the court in which he sits as a judge. N.Y. State 228 (1972). It is an equally well established ethical principle that no member of a law firm may accept any professional employment which any member of the firm cannot properly accept. N.Y. State 203 (1971).

These two principles have been carried into Section 471 of the Judiciary Law, which provides that the law partner of a judge shall not practice before him or in a court of which he is or is entitled to act as a member.

This law requires an attorney to decline employment when his law partner acts as a justice of the court in which litigation in the case would be pending. N.Y. State 214 (1971). And, conversely, where a partner or associate in a law firm is a district attorney or assistant district attorney, it is improper for another partner or associate in the firm to accept the position of justice of the peace in a town in the same county. N.Y. State 214 (1971); N.Y. State 257 (1972).

If anyone in the firm or the firm itself is charged with the responsibility of prosecuting criminal cases in behalf of the town, as town attorney or otherwise, then it would be improper for a member of the firm to hold the position of town justice. The duty of impartiality of a judge is in irreconcilable conflict with the duty of his partner or firm to prosecute before that court.

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**NEW YORK STATE BAR ASSOCIATION**  
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If the legal services performed by the firm for the town do not involve criminal prosecution, and do not contemplate litigation before that court, then, in the absence of any other conflict of interest, there would be no impropriety in a partner holding the position of part-time town justice; the town would be in the position of any other client of the firm, and the mere fact that the town pays the justice's salary would not make the relationship improper. ABA Inf. 798 (1964); N.Y. State 252 (1972). Under such circumstances, however, the firm's practice would be limited by all the ethical considerations laid down for the law practice of a part-time town justice. See, N.Y. State 214 (1971); N.Y. State 228 (1972); N.Y. State 252 (1972); EC 8-8; Code of Judicial Conduct Canon 3C.