



Committee on Professional Ethics

Opinion #342 - 5/30/74 (18-74) Topic: Conflict of interest;
appearance of impropriety;
practice of partner or
associate of town justice.

Digest: Partner or associate of town
justice may appear before
administrative board or agency
of the town depending on
circumstances.

Code: Canon 9
EC 8-8; 9-1; 9-2; 9-3; 9-6
DR 9-101

QUESTION

May a partner or associate of town justice appear before administrative boards or agencies of the town?

OPINION

Since it is a well established ethical principle that no partner or associate of a law firm may accept any professional employment which any member of the firm cannot accept N.Y. State 280 (1973), the real question presented is whether the town justice may so appear.

The answer depends upon, among other things, whether the town is a town of the first class or second class.

Former Judicial Canon 31 provided, among other things, that where judges are permitted by law to practice law:

"...In such cases one who practices law is in a position of great delicacy and must be scrupulously careful to avoid conduct in his practice whereby he utilizes or seems to utilize his judicial position to further his professional success..."

While the provisions of former Judicial Canon 31 have been dispersed among the Canons of the new Code of Judicial Conduct, the absolute prohibitions against private practice in the new Code do not apply to part-time judges. (See compliance statement incorporated in Code of Judicial Conduct.)

In N.Y. State 252 (1972) this Committee stated that it interpreted former Judicial Canon 31 as permitting part-time judges to engage in practice not forbidden by law, before tribunals of which they are not a member, provided the circumstances would not give rise to any possible appearance of impropriety, prejudice or favoritism.

In that opinion it was held that the ethical propriety of a

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part-time village justice representing a private client before a zoning board of appeals in the village depends on the circumstances of each particular case, and that such representation would be proper only if (1) it were clear that there were no conflict between his duties to the public as a judge and his undivided loyalty to his client, and (2) there were a total absence of "even the appearance of professional impropriety." The opinion cited Canon 9; EC 9-2; EC 9-3; EC 9-6; EC 8-8; DR 9-101.

We see no reason to distinguish between a part-time village justice and a part-time town justice of a first class town, and, accordingly, adopt N.Y. State 252 (1972) as applicable to the town justice of a first class town, his partners, and his associates.

In towns of the second class the town justice is a member of the town board by statute unless the town has otherwise determined under Section 60-a of the Town Law. The town justice in second class towns where he is a member of the town board may not properly appear before administrative boards or agencies of the town because as a town board member he participates in the appointment of the members of those boards and agencies. Consequently, neither his partner nor his associate may so appear.
