



**New York State Bar Association
Committee on Professional Ethics**

Opinion 1269 (07/16/2024)

Topic: Part-Time Judge; Part-Time Public Defender; Conflict of Interest;

Digest: A part-time assistant public defender whose law partner is both his cousin and a part-time town court judge may not represent clients of the public defender's office in the town court where his cousin/law partner and his cousin's co-judge serve because that representation would violate Rule 8.4(f). The assistant public defender may, however, represent defendants in a centralized arraignment part when his cousin and his cousin's co-judge are not presiding, even when the case is subsequently assigned to the town court where his cousin is a part-time judge, as long as the assistant public defender no longer represents the client after the arraignment and does not appear on behalf of the client in the town court where his cousin is a judge. Such limited representation at the centralized arraignment part does not violate Rule 8.4(f).

Rules: 1.0(h), 8.4(f)

FACTS:

1. The inquirer is an attorney who is the Public Defender in a County Public Defenders' Office. Two of that county's Assistant Public Defenders ("APDs") work part-time and perform their APD duties out of their own private offices. These duties include client contact, correspondence, drafting motions and pleadings, and maintaining case files.
2. One of the part-time APDs is also a partner in a private law firm. His partner is a part-time judge in the local town court and is also his cousin. One other judge, a non-lawyer, serves in the same town court.
3. The attorneys working in the Public Defender's Office have represented defendants at the centralized arraignment part of the county jail as counsel at first appearance ("CAFA"). The APDs have rotating assignments to appear as CAFA in the centralized arraignment part. Similarly, local town court judges take turns presiding over this centralized arraignment part on a rotating basis. The inquirer, his law partner cousin/judge, and his cousin's co-judge, all take turns appearing in this centralized arraignment part. After arraignment, a case is transferred to the appropriate town court with jurisdiction over the charges. When the APD's cousin or his cousin's co-judge is presiding over the centralized arraignment part, the APD does not appear as CAFA for any defendants. There are cases, however, where the APD appears as CAFA in the centralized arraignment part but the case is then transferred to the town court where his cousin presides. In these situations, the APD will no longer represent the defendant in the case after the arraignment,

and another APD will be assigned instead.

QUESTION:

4. May a part-time Assistant Public Defender whose cousin and law partner is a part-time town court judge appear solely as CAFA at a defendant's arraignment in a centralized arraignment part if neither the APD's cousin nor his cousin's co-judge are presiding, if the case will be transferred immediately after arraignment to the town court where the Assistant Public Defender's cousin presides as a part-time judge (after which another attorney will take over as counsel for the defendant)?

OPINION:

5. The question asks about two related situations: (A) May an APD represent a defendant in the town court before his cousin or his cousin's co-judge? and (B) if so, may an APD represent a defendant solely as CAFA in a centralized arraignment part when neither the APD's cousin nor his cousin's co-judge are presiding if the defendant's case will be transferred immediately after arraignment to the cousin's town court, where another attorney will take over the representation?

A part-time Assistant Public Defender may not represent clients in a town court where his law partner/cousin, or the law partner/cousin's co-judge, preside

6. The part-time APD clearly cannot appear in the town court in which his cousin and his cousin's co-judge preside. This follows from N.Y. State 1243 (2022), where we said that a part-time APD whose law partner is both his cousin and a part-time town court judge is precluded from representing clients of the public defender's office in the town court where the part-time judge serves because such representation would appear to violate both Judiciary Law Section 471 and the Rules of Judicial Conduct found in 22 NYCRR Part 100, thereby constituting a violation of Rule 8.4(f) of the New York Rules of Professional Conduct ("Rules").

7. Rule 8.4(f) states that: "a lawyer or law firm shall not . . . (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law." The "applicable rules of judicial conduct" include the Rules of the Chief Administrative Judge set forth in 22 NYCRR Part 100, and "other law" includes sections of the Judiciary Law that may be applicable to the inquiry. Interpreting the New York Judiciary Law is beyond the Committee's jurisdiction, so we express no views on it, but the rules of judicial conduct are within our jurisdiction so we will discuss their relevance to this inquiry.

8. Section 100.6(B)(2) of the rules of judicial conduct provides that a part-time judge "shall not practice law in the court on which the judge serves, or in any other court in the county in which his or her court is located..." (This seems consistent with Judiciary Law § 16, which states: "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.")

9. This prohibition also applies to the part-time judge's partners and associates as well. Rule 1.0(h) of the Rules defines "firm" or "law firm" as including but not limited to, "a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a qualified legal assistance organization, a

government law office, or the legal department of a corporation or other organization.”

10. Section 100.6(B)(3) of the Rules of Judicial Conduct prohibits a law partner from practicing in the town court where his partner and cousin work as a part-time judge. (A part-time judge “shall not permit his or her partners or associates to practice law in the court in which he or she is a judge, and shall not permit the practice of law in his or her court by the law partners or associates of another judge of the same court who is permitted to practice law...”). Correspondingly, § 471 of the New York Judiciary Law states that:

The law partner or clerk of a judge shall not practice before him, as attorney or counsellor in any cause, or be employed in any cause which originated before him. A law partner of, or 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, or in a cause originating in that court; except where the latter is a member of a court, ex officio, and does not officiate or take part, as a member of that court, in any of the proceedings therein.

11. As noted in N.Y. State 1243 (2022), the remittal provision in § 100.3(F) of the Rules of Judicial Conduct allows the court and the parties in some cases to waive judicial disqualification, but § 100.3(F) does not appear to apply in situations described in RJC 100.6(B)(3).

A part-time Assistant Public Defender may represent a defendant in a centralized arraignment part when neither his law partner cousin nor his cousin’s co-judge are assigned, when the case will be sent for adjudication to his cousin’s town court as long as the case is reassigned to another Assistant Public Defender after arraignment

12. The part-time APD says he does not appear as a CAFA when his cousin or his cousin’s co-judge are presiding in the centralized arraignment part. Occasionally, however, he does represent defendants in the centralized arraignment part as a CAFA when the case will be transferred for jurisdictional reasons to the town court where his cousin presides. When such a transfer to the cousin’s town court occurs, another APD is assigned to the case after the arraignment.

13. Section 100.2 of the Rules of Judicial Conduct, entitled “A judge shall avoid impropriety and the appearance of impropriety in all of the judge’s activities,” sets forth in § 100.2 (A) and (B) the following requirements for judicial conduct:

- A. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
- B. A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment.

14. If the APD continued to represent the client after a transfer to his cousin’s town court, that representation would violate Rule 8.4(f) (which provides that “a lawyer or law firm shall not . . . (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law”) because the APD would be causing his cousin to violate §§ 100.6(B)(3) and 100.2 (A) and (B) (quoted above).

15. As we noted in N.Y. State 1115 ¶ 11 (2017), which discusses Rule 8.4(f):

Under this provision, a lawyer may not knowingly undertake a representation when doing so would cause a judge to violate his or her own ethical obligations under the Rules of Judicial Conduct (such as the obligation in § 100.6(B)(3) not to “permit his or her partners or associates to practice law in the court in which he or she is a judge”).

16. In our view, a part-time APD may appear in the centralized arraignment part for the sole purpose of representing a defendant for arraignment, when the defendant’s charges will subsequently be transferred to the same town court on which the part-time APD’s cousin/law partner sits, provided the APD does not represent a client in front of his cousin or his cousin’s co-judge. That would be consistent with the strictures discussed in N.Y. State 1115. The APD’s cousin (as judge) or the APD’s cousin’s co-judge are not under the APD’s control and as judges they will presumably take whatever action they deem appropriate when a case that the APD appeared on at the central arraignment part comes before them in their town court, but under Rule 8.4(f) the APD may not knowingly assist them in conduct that violates the applicable rules of judicial conduct or other law.

CONCLUSION:

17. A part-time assistant public defender whose law partner is both his cousin and a part-time town court judge may not represent clients of the public defender’s office in the town court where his cousin and law partner, and his cousin’s co-judge, serve because that representation would violate Rule 8.4(f). The assistant public defender may, however, represent defendants in a centralized arraignment part when his cousin and his cousin’s co-judge are not presiding, even when the case is subsequently assigned to the town court where his cousin is a part-time judge, as long as the assistant public defender no longer represents the client after the arraignment and does not appear on behalf of the client in the town court where his cousin is a judge. Such limited representation at the centralized arraignment part does not violate Rule 8.4(f).

(18-23)