



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

**Opinion 1243 (07/07/2022)**

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

**Digest:** A part-time assistant public defender whose law partner is 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 Judiciary Law § 471 and the Rules of Judicial Conduct found in 22 NYCRR Part 100, thereby constituting a violation of Rule 8.4(f). A full-time assistant public defender whose father-in-law is the same part-time judge is similarly precluded from appearing in the town court, but under certain circumstances he may participate outside of court in defending clients of the public defender's office. These prohibitions are not imputed to other attorneys in the public defender’s office.

**Rules:** 1.7, 1.8, 1.9, 1.10(a), 8.4(f)

**FACTS:**

1. The inquirer is a county public defender who practices exclusively out of the public defender’s offices. A part-time assistant public defender on the inquirer’s staff is the first cousin of, and law partner with, a part-time town court judge in a town within the same county. The part-time assistant public defender does not maintain an office in the public defender’s office and performs his public defender duties from the law offices he shares with his law partner, the part-time town court judge. Another full-time assistant public defender who practices exclusively out of the public defender’s office is the son-in-law of the part-time town court judge.

**QUESTIONS:**

2. May an assistant public defender who is a law partner and first cousin of a part-time town court judge represent public defender clients in the town court in which the judge serves?
3. May a full time assistant public defender who is the son-in-law of a part-time judge but shares no office space with the part-time judge represent clients of the public defender’s office in the town court in which the judge serves?
4. If the answer to either question is no, would the disqualification be imputed to all lawyers in the public defender’s office?

**OPINION:**

**Disqualification Pursuant to Rule 8.4(f)**

5. Rule 8.4(f) of the New York Rules of Professional Conduct (“Rules”) provides that a

“lawyer or law firm shall not ... (f) knowingly assist a judge or judicial officer in conduct that is in violation of applicable rules of judicial conduct or other law.” (Emphasis added.) This Committee’s authority is limited to interpreting the Rules, and we have no jurisdiction to decide questions of law. Nonetheless, we call the inquirer’s attention to provisions of the New York Judiciary Law and the Rules of Judicial Conduct (“RJC”) that are pertinent to his inquiry. See, e.g., N.Y. State 1115 ¶ 14 (2017) (citing various provisions of the Judiciary Law and RJC when analyzing a public defender’s duties under Rule 8.4(f)).

6. Regarding “law,” the first provision that we consider relevant to the inquirer’s situation is Section 471 of the Judiciary Law, which provides:

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 . . . .

7. Regarding “rules of judicial conduct,” Section 100.6(B)(3) of the RJC provides:

A part-time judge:

. . . .

(3) 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, but may permit the practice of law in his or her court by the partners or associates of a judge of a court in another town, village or city who is permitted to practice law . . . .

8. Section 100.3(E)(1)(e) of the RJC provides:

(1) A judge shall disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to instances where:

. . . .

(e) The judge knows that the judge or the judge’s spouse, or a person known to be within the fourth degree of relationship to either of them, or the spouse of such person, is acting as a lawyer in the proceeding or is likely to be a material witness in the proceeding. Where the judge knows the relationship to be within the second degree, (i) the judge must disqualify him/herself without the possibility of remittal if such person appears in the courtroom during the proceeding or is likely to do so, but (ii) may permit remittal of disqualification provided such person remains permanently absent from the courtroom.

9. Section 100.3(F) of the RJC describes the remittal procedure, in which the court and the parties can waive judicial disqualification in some circumstances where such disqualification would otherwise be required. In pertinent part, Section 100.3(F) provides:

A judge disqualified by the terms of subdivision (E), except . . . subparagraph (1)(e)(i) of this section. may disclose on the record the

basis of the judge's disqualification. If, following such disclosure of any basis for disqualification, the parties who have appeared and not defaulted and their lawyers, without participation by the judge, all agree that the judge should not be disqualified, and the judge believes that he or she will be impartial and is willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

10. The judge's son-in-law stands within the second degree of relationship to the part-time judge in this inquiry, and the judge's cousin stands within the fourth degree of relationship to the part-time judge. See RJC § 100.0(C) (setting out how the "degree of relationship" is calculated for various categories of people under the RJC).

11. Based on the apparent bar of Judiciary Law § 471, and because there seems to be no remittal provision in the RJC for disqualification required of a part-time judge pursuant to RJC §100.6(B)(3), the part-time assistant public defender who is a law partner with the part-time judge may not represent clients in town court proceedings. This is the case notwithstanding the part-time assistant public defender's status as a first cousin of the part-time judge which, placing them in the fourth degree of relationship to each other, might otherwise permit remittal pursuant to RJC § 100.3(F).

12. On the other hand, Judiciary Law § 471 does not appear applicable to the full-time assistant public defender who is not a law partner with, or otherwise "connected in law business" with the part-time judge (his father-in-law), with whom he stands in the second degree of relationship. Based on that second degree relationship, it also appears that the remittal provision of RJC § 100.3(F) is applicable. Accordingly, although the full-time assistant public defender may not appear before any judge of the town court, he may participate outside the courtrooms in proceedings pending in the town court if (i) the prosecutor and the defendant agree that the judge presiding should not be disqualified and (ii) the judge presiding believes he can be impartial.

13. Our opinion here is consistent with our opinion in N.Y. State 1115 (2017), where we determined that members of a public defender's office may not represent a client in a city court where another member of the public defender's office serves as a part-time judge. We reasoned that the inquirer's proposed conduct would violate Rule 8.4(f) by causing a judge to violate the command of the RJC not to "permit his or her partners or associates to practice law in the court in which he or she is a judge." RJC §100.6(B)(3). N.Y. State 1115 was part of a long line of opinions issued by this Committee dealing with the ethical constraints placed upon associates and partners of part-time judges, including inquiries involving members of public defenders' offices. See, e.g., N.Y. State 29 (1966) (an associate of a part-time town court judge may not appear before either judge of a town court consisting of two judges); N.Y. State 65 (1967) (applying the prohibition to partners, as well); N.Y. State 497 (1978) (improper for an assistant public defender to share office space with a village justice where any member of the public defender's staff appeared in the justice court); N.Y. State 701 (1998) (lawyer who is co-counsel with a part-time judge in a civil case may not appear before another judge on the part-time judge's court because the public might perceive that the administration of justice is not fairly and impartially served).

#### **Lack of Imputation Pursuant to Rule 1.10(a)**

14. Pursuant to Rule 1.10(a), certain conflicts are imputed to all lawyers associated with the attorney whose conduct or situation gave rise to the conflict. Rule 1.10(a) provides:

While lawyers are *associated in a firm*, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rule 1.7, 1.8 or 1.9, except as otherwise provided therein. [Emphasis added.]

15. Rules 1.7, 1.8 and 1.9 all concern conflicts with current or former clients. Here, neither the disqualification of the part-time assistant public defender nor the disqualification of the full-time public defender arises from a conflict of interest with a current or former client under Rules 1.7, 1.8 or 1.9. Under Rule 1.10(a), disqualifications based on Rule 8.4(f) are not imputed to other attorneys in public defender's office or to the public defender himself.

16. We recognize that certain language in N.Y. State 1115 ¶ 8 might be read to imply that disqualifications under Rule 8.4(f) are imputed to attorneys "associated" in the same firm, but that was not the Committee's intention. Rather, Opinion 1115's discussion of Rule 1.10(a) was intended to emphasize that all the assistant public defenders in the public defender's office in that inquiry were associated with the part-time judge, who was also an assistant public defender in the same office. Therefore, all lawyers associated with the part-time judge in law practice were disqualified. Here, in contrast, the part-time judge is associated only with the part-time assistant public defender who is his first cousin and law partner.

### **CONCLUSION:**

17. A part-time assistant public defender whose law partner is 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 Judiciary Law § 471 and the Rules of Judicial Conduct found in 22 NYCRR Part 100, thereby constituting a violation of Rule 8.4(f). A full-time assistant public defender whose father-in-law is the same part-time judge is similarly precluded from appearing in the town court, but under certain circumstances he may participate outside of court in defending clients of the public defender's office. These prohibitions are not imputed to other attorneys in the public defender's office.

(35-21)