

**NEW YORK STATE BAR ASSOCIATION**  
**Professional Ethics Committee Opinion**

OPINION

A lawyer holding public office has a duty to abstain from voting or otherwise participating in a matter in which his firm was involved at a time when he was a member of the firm, irrespective of whether the client had been represented by him or by one of his partners or associates. The lawyer's withdrawal from the firm or termination of the attorney-client relationship does not free him from any ethical obligations to which he would otherwise have been subject.

Canon 9 provides that "[a] lawyer should avoid even the appearance of professional impropriety." EC 9-2 recognizes that "a lawyer should determine his conduct by acting in a manner that promotes public confidence in the integrity... of the legal system and the legal profession."

It would be violative of these two principles for the lawyers not to disqualify himself from participating in the decision under the circumstances set forth in the question.

Furthermore, a lawyer should not undertake to act as a public official in a matter which might require him to utilize confidential information received from a former client or to which he was privy as a member of the firm representing the client. EC 5-1 provides:

"The professional judgment of a lawyer should be exercised, within the bounds of the law, solely for the benefit of his client and free of compromising influences and loyalties.<sup>1</sup> Neither his personal interests, the interests of other clients, nor the desires of third persons should be permitted to dilute his loyalty to his client."

A lawyer's obligation "to preserve the confidences and secrets of his client continues after the termination of his employment." EC 4-6 (See also EC 4-5, DR 4-101 and EC 5-14 and 5-15).

Opinion #146 - 7/27/70 (25-70)    Topic: Conflict of Interest for Part-time Judge.

Digest: A judge of a court having jurisdiction to try misdemeanors and felony hearings may not practice criminal law in a higher court.

Code\*: EC 9-2, 9-6  
DR 9-101 (A)  
Canons of Judicial Ethics  
No. 31

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QUESTION

May an attorney, who is a judge of a court which meets once a week with jurisdiction to try misdemeanors and hold felony hearings, engage in the defense of clients in a higher criminal court in the same county?

OPINION

Such conduct would be improper.

ABA 242 (1942) states in part as follows:

"...acceptance of a judgeship with the duties of conducting misdemeanor trials, and examinations in felony cases to determine whether those accused should be bound over for trial in a higher court, ethically bars the judge from acting as attorney for the defendants upon such trial, whether they were examined by him or by some other judge. Such a practice would not only diminish public confidence in the administration of justice in both courts, but would produce serious conflict between the private interests of the judge as a lawyer, and of his clients, and his duties as a judge in adjudicating important phases of criminal processes in other cases. The public and private duties would be incompatible. The prestige of the judicial office would be diverted to private benefit, and the judicial office would be demeaned thereby."

Recent opinions concerning a part-time District Attorney and a City Councilman practicing law, further stress the importance of avoiding any possible appearance of conflicting interests or impropriety. N.Y. State 130 (1970), N.Y. State 110 (1969), N.Y. State 99 (1968), EC 9-2, EC 9-6, DR 9-101 (A), Canon 31 of the Canons of Judicial Ethics

Opinion #146(a) - 12/11/70 (61-70) Topic: Conflict of Interest;  
Appearance of Impropriety.

Digest: Part-time judge not to practice criminal law in a court of higher jurisdiction.

Code\*: EC 9-2, 9-6;  
DR 9-101.

Canons of Judicial  
Ethics: #31.

QUESTION

May a local justice of the peace, appear in the County Court for a defendant charged with a felony which did not arise in the town or village in which the local judge has jurisdiction, but is within the same county?