



## Committee on Professional Ethics

Opinion #361 - 9/10/74 (38-74)

Topic: Practice of law by confidential law clerk to Supreme Court Justice.

Digest: Confidential law clerk to a Supreme Court Justice may not practice law in Supreme Court.

Code: EC 9-1.  
DR 5-105(D).

### QUESTION

May a part-time confidential law clerk to a Supreme Court Justice practice law in Supreme Court?

### OPINION

Since this committee does not pass on questions of law, it does not decide whether Section 471 of the Judiciary Law answers the question. Every ethical consideration, however, dictates that a confidential law clerk to a Supreme Court Justice should not be allowed to practice law in Supreme Court and that it is highly improper for him to do so.

The mere act of a confidential clerk in holding himself out as engaged in the general practice of law may carry an intimation that he is in position to influence the decision of the court and that he is using his relationship with the judge for his private advantage and to attract private business, all to the discredit of the court and the disparagement of our system of justice in the eyes of the public.

Our system of justice depends on the confidence of the public in the integrity and fairness of our judges and respect for our system. Any practice by a lawyer which to the slightest degree impairs that confidence for personal gain is improper. See, EC 9-1. Cf. N.Y. State 357 (1974).

However, an extended discussion is unnecessary as rules of the First and Second Judicial Departments require confidential law clerks to be full time and accordingly, they cannot practice privately. 22 NYCRR 604.1; 22 NYCRR 691.15. The Fourth Judicial Department recently adopted 22 NYCRR 1022.15(b) which provides:

"An attorney employed on a part-time basis in any court in the department may participate in any matter in any court except the court in which he is employed. Any attorney practicing in partnership, professional corporation or regular association with an attorney employed by a court is subject to the same disqualifications, unless the relationship is disclosed to every other party or counsel appearing in the matter and such parties or counsel waive on the record

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any objection to proceeding." (Underscoring added.)

Although, the Third Judicial Department has not apparently adopted a similar rule, the reasoning set forth herein would be equally applicable to attorneys, their partners and associates practicing in that Department. DR 5-105(D); N.Y. State 313 (1973); cf. 22 NYCRR 822.1 (b).

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