



Committee on Professional Ethics

Opinion #376 - 3/26/75 (5-75)

Topic: Accepting other State employment while serving as law clerk to a Supreme Court Justice.

Digest: Absent statute or Court rule, a simultaneous employment of law clerk to Supreme Court Justice in another State position not unethical, provided duties do not involve practicing law in Supreme Court or matters likely to come before that Court.

Code: DR 5-105(A); 9-101(B) and (C);
EC 8-8; 9-1

QUESTION

May a part-time law clerk for a Supreme Court Justice simultaneously hold a part-time State government position?

OPINION

To the extent that statute or rule of court is applicable, this Committee makes no judgment on the question. See for example, Judiciary Law Sec.471 and Rules of the Appellate Division 22 NYCRR 604.1; 691.15; 839.4; 1022.16.

In the absence of such controlling factors and considering only the ethical aspects, the propriety of a law clerk to a Supreme Court Justice simultaneously holding a part-time position in another State government office will depend on the nature of the work involved in such other position. If it includes practicing law, it would be improper for him to participate in any matter in the Supreme Court. N.Y. State 361 (1974); cf. N.Y. State 357 (1974) and N.Y. State 280 (1973). Even should the law clerk not be required to appear in court, if the matter upon which he worked was one likely to be brought into question in the Supreme Court, his association with one of the Justices of the Supreme Court inevitably would create an appearance of ability to influence the Court, in violation of Canon 9. See DR 9-101(C). Additionally, his duty as a law clerk to assist the Court in arriving at an impartial decision would be in conflict with his responsibility as a public employee to support the action taken by his governmental office. DR 5-105(A) and DR 9-101(B) are relevant by analogy. A lawyer should not place himself in a position which detracts from public confidence in our legal system and in the legal profession. EC 9-1. As stated in EC 8-8: "A lawyer who is a public officer, whether full or part-time, should not engage in activities in which his personal or professional interests are or foreseeably may be

in conflict with his official duties."

On the other hand, if the second position is totally unrelated to the practice of the law and the attorney's work would not be in an area in which legal problems might arise and be presented to the Supreme Court for determination, there would be no impropriety in a full or part-time law clerk's accepting full or part-time employment in another State government office.
