



## Committee on Professional Ethics

Opinion #385 - 4/24/75 (17-75)

Topic: Conflict of interest

Digest: Not necessarily improper for Town Attorney who frequently represents the town assessor in his official capacity to represent the town in a proceeding by or against the assessor.

Code: Canon 9  
DR 4-101

### QUESTION

May a Town Attorney who frequently represents the Town Assessor in his official capacity represent the Town in a proceeding seeking removal of the Town Assessor or represent the Town in a proceeding brought by the Town Assessor against the Town involving a salary controversy?

### OPINION

The duties of the Town Attorney include acting as legal advisor to all town officers in their official capacities. See, 1965 Opinions of the State Comptroller of New York, Opinion 65-322. It is apparently for this reason that the Town Attorney has very frequently represented the Town Assessor as a public official. In subsequent litigation between the Town and the Town Assessor, it is assumed that any confidential information which the Town Attorney had obtained from the Town Assessor as his legal advisor would not be relevant to the proceeding by or against the Assessor since the representation involved only his official duties. Therefore, the representation would not be inconsistent with the provisions of DR 4-101. See N.Y. State 303 (1973) for criteria in determining whether a lawyer may be an attorney in a suit against a former client. If the contrary were true, the representation should not be undertaken by the Town Attorney.

There would be no appearance of impropriety under Canon 9 in having the Town Attorney on the other side of litigation involving the Town Assessor since the prior representation was not of the Town Assessor personally, but only as required by law and in his official capacity, cf. N.Y. State 326 (1974); N.Y. State 364 (1974).

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