



Committee on Professional Ethics

Opinion #497 - 11/2/78 (57-78) Topic: Sharing office space;
assistant public defender;
village justice.

Digest: Assistant public defender
may not share office space
with village justice where
any member of public
defender's staff appears
in justice court.

Code: Canons 5 and 9
EC 9-1; 9-6
DR 5-105(D); 9-101(C)

QUESTION

May an assistant public defender share office space with
a village justice?

OPINION

It is not necessarily improper for a lawyer to share office space with a judge. This Committee has held it to be improper, however, for a lawyer to appear either before a judge with whom the lawyer is sharing office space or before another judge of the same court. N.Y. State 65(a) (1970). In so holding, we have observed that it would be as improper for the lawyer who merely shares office space with a part-time judge to practice in that judge's court as it would be for a partner or associate of the judge to do so.

The reason for prohibiting a lawyer from sharing office space with a judge in whose court the lawyer practices is grounded on the need to promote public confidence in the administration of justice by avoiding the appearance of impropriety. See, EC 9-1, EC 9-6 and DR 9-101(C); see also, ABA 104 (1934).

Throughout, we have employed the term "sharing office space" to include an arrangement between persons who are neither partners nor associates for the sharing of either space or services in the same office or suite of offices. See, N.Y. State 437 (1976).

We are now asked whether an assistant public defender may share office space with a village justice. While the particular assistant public defender about whom inquiry is made does not personally appear in justice court, other members of the public

defender's staff do. In this latter connection it is important to note the extent to which the activities of the other members of the public defender's staff may determine the propriety of the proposed arrangement.

A public defender's staff, like that of a district attorney, is treated comparably to a partnership in private practice for purposes of applying the ethical precepts of Canons 5 and 9. See, N.Y. State 260 (1972); see also, N.Y. State 492 (1978) and N.Y. State 313 (1973). Generally, what is prohibited to one member of the public defender's staff is prohibited to all. See, DR 5-105(D). Since the public defender and certain other members of his staff appear in justice court, the same principles which render it improper for such persons to share office space with the village justice operate through our analogy of the public defender's office to a partnership in private practice and thereby preclude any member of his regular staff from sharing office space with the village justice.

One exception to the foregoing rule should be noted. On occasion, a lawyer may be appointed to serve as special counsel where the public defender and his regular staff are disqualified. See, N.Y. State 462 (1977). Although the title given to special counsel appointed under such circumstances is often that of "assistant public defender," we believe his service in that capacity should not prevent him from sharing office space with a judge in whose court the public defender and the members of his regular staff appear or preclude such persons from appearing before the judge with whom special counsel is sharing office space. Of course, consistent with the foregoing principles and authorities, any appearance by special counsel in the court of which that judge is a member would be improper.

For the reasons stated, and subject to the qualifications hereinabove set forth, the question posed is answered in the negative.
