

FO 1983-4/5

NEW HAMPSHIRE BAR ASSOCIATION  
Ethics Committee Formal Opinion  
Part-Time District Court Judge: Public Service Limitations/Practice Limitations

March 13, 1984

FORMAL OPINION

ETHICS COMMITTEE FORMAL OPINION: #1983-4/5  
April 5, 1983

Reviewed by Board of Governors March 22, 1984

**Part I**

Question

Can an attorney who is a part-time District Court Judge serve as a Town Moderator in the town in which he serves as a District Court Judge?

Answer

Yes. See Supreme Court Rule 38, Canon 7 (2). "A Judge...may continue to hold his judicial office while being...a Moderator of any governmental unit, if he is otherwise permitted by law to do so". Under RSA 40:1, the Town Moderator serves as the President over Town Meeting Elections. The role is quasi-judicial in nature. There do not appear to be any conflicts that could arise between the Moderator and the part-time District Court Judge.

**Part II**

Question

May a part-time District Court Judge act as counsel to a town within the jurisdiction of District Court?

Answer

For the following reasons, the Committee believes that it is improper for an attorney to act as town counsel for a town within the jurisdiction of the District Court in which the attorney or any other member or associate of his firm is a part-time Judge. The lawyer's conduct in this dual capacity violates the Code of Professional Responsibility. Canon 1 states that a lawyer should assist in maintaining the integrity and competence of the legal profession. D.R. 1-102 (A) (5) states that a lawyer should not engage in conduct that is prejudicial to the administration of justice. By acting in the dual capacity as town counsel and as district court judge, and by acting as counsel to a party that is before him a large percentage of the time in the district court, the lawyer who voluntarily places him or herself in the position unnecessarily prejudices the administration of justice.

Canon 5 states that a lawyer should exercise independent professional judgment on behalf of a client. Canon 7 states that a lawyer should represent a client zealously within the bounds of the law. To the extent that a town counsel does not believe that he or she should advise the town client on certain matters that may come before the district court, he or she is not able to give the client full and effective service. A town counsel who is also a judge will always have the judicial role in the back of his or her mind while rendering legal advice to the town. Therefore, he or she is not able to render independent professional judgment and represent the client fully, fairly, and competently on all of its legal matters.

Canon 9 states that a lawyer should avoid even the appearance of professional impropriety. D.R. 9-101 (A) states that a lawyer shall not accept private employment in a matter upon the merits of which he or she has acted in a judicial capacity. D.R. 9-101 (C) states that a lawyer shall not state or imply that he or she is able to influence improperly, or upon irrelevant grounds, any tribunal, legislative body, or public official. A lawyer who is both town counsel and the local district court judge creates a public image that the interests of the Town and the Court are inextricably intertwined. To the extent that this creates the impression among the public that they face a biased tribunal in litigation against the town in district court, either in civil or criminal cases, the lawyer who causes this impression by acting as both town counsel and as district court judge violates Canon 9.