

NEW HAMPSHIRE BAR ASSOCIATION

Ethics Committee Advisory Opinion
May 11, 1982

Municipal Representation Conflicts - Town Counsel/Municipal-District Court

On November 10, 1981, the Ethics Committee of the New Hampshire Bar Association issued a formal Ethical Opinion in response to the question of whether or not a law firm may represent defendants in criminal matters before the district court of a municipality where the same law firm represents that municipality on a nearly full-time basis. The answer given was in the negative.

In a letter addressed to the Chairman of this Committee and dated December 15, 1981, you have inquired whether you may represent defendants in criminal matters in the Jaffrey District Court while at the same time representing the Towns of Jaffrey and Rindge on a nearly full-time basis. In your inquiry letter and in subsequent communications with the Committee, you have indicated that it is your intention to represent those Towns in connection with planning and zoning matters only and in connection with certain other civil litigation matters but, in any event, not in connection with any legal problems or questions which involve the administration of the district court or the police departments of either Town. You have also indicated that you are not on any retainer basis with either Town and would be willing to enter into a written agreement with each Town setting forth the limitations of your engagement.

Based upon our understanding of the circumstances and limitations upon your engagement, the Committee is of the opinion that your representation of these Towns on such a limited basis would risk violation of the aforementioned Ethical Opinion. A significant number of criminal cases involve allegations of constitutional deprivation. In such circumstances, a number of collateral civil rights may vest with criminal defendants. A cause of action against the listed Towns or their employees may also exist.

Rather than institute suit against a Town you represent, albeit in other matters, and rather than have a criminal defendant question the zealotry of the defense, when issues are not raised or suit not instituted, we believe avoidance of these problems appropriate. Therefore, we deem this proposed course of action not in accord with Canons 5 and 9 of the Code of Professional Responsibility.