

NEW HAMPSHIRE BAR ASSOCIATION
Representing A Criminal Defendant in a Municipality
Where a Partner is Town Counsel

Passed by Ethics Committee 11/10/81, Reviewed by Board of Governors 11/19/81

Ethics Committee Formal Opinion

The question has been asked 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.

This Committee, by decision dated May 20, 1980 (6 NHLW 521) responded to the following question: "May a partner, associate or employee of any law firm...represent a client before any...court or other process of a town in which the law firm...represents the town on a continuing basis?"

The answer given was in the negative, based on the Committee's opinion that such representation would constitute a direct violation of Canon 5 and 9 of the Code of Professional Responsibility. Reference was made in that opinion to a prior advisory opinion of the Professional Conduct Committee, dated February 7, 1975 which stated in part "the law firm's association with a municipality may give access to certain information which may influence the outcome of a claim against the municipality."

Under our existing system of District Courts, the court must be considered to be an agency of the municipality. The court facilities are provided and paid for by the municipality as are the salaries of the judge and most of the court personnel. The municipality is responsible for paying the legal fees of municipal counsel while at the same time paying the salaries of the police officers who appear before the District Court.

Should a claim be brought against any of these court officials, or a member of the local police department, it will be the responsibility of the municipal attorney to provide legal advice to the municipality in such instance, if not to provide actual representation for the court or police officials involved. The possibility of conflict in such a situation is readily apparent, particularly in this case where the municipal counsel already represents the municipality in labor negotiations against the local police union.

There being no compelling reason to over-rule the previous decision of this Committee, the answer to the question in this case must also be in the negative.