13 OFFICE SHARING — MUNICIPAL JUDGE

Adopted March 26, 1960.
Revised May 18, 1996.

Syllabus

It is improper for a municipal judge and a city attorney to engage in private law practice in the same suite of offices.

Facts

Both the municipal judge and the city attorney are permitted to engage in the private practice of law, and are office associates. However, they do not share professional fees or their salaries from the municipality, and each maintains his or her own separate practice and individual books and records.

Opinion

This practice violates Rules 3.5 and 8.4(e) of the Colorado Rules of Professional Conduct.[1] It is improper for a municipal judge and a city attorney to engage in private law practice in the same suite of offices. This relationship should be severed and separate offices established.

The arrangement is obviously fraught with peril. The danger is twofold: first, the inference that by reason of this extra-judicial relationship, the city attorney might enjoy unwarranted status in the eyes of the Court for economic reasons; secondly, the inference that, consciously or unconsciously, some legal point urged by the city attorney might assume extra weight on grounds informally voiced by the city attorney outside Court, and thus not be open to argument by defense counsel at the trial with both sides present.

The Committee is drawing upon the spirit of several ethical rules.

In Opinion 104, the American Bar Association Committee held that an attorney who occupied law offices with a police magistrate, although not in actual partnership with the lawyer should not accept employment by persons accused of crime who were arraigned before the lawyer's office associate, either while the case was pending before the police magistrate or thereafter, stating unequivocally: "Lawyers should not conduct themselves in such a way as to impair the confidence which the community has in the administration of justice." Like reasoning would apply to the lawyer for the prosecution.

And that same Committee, in its Opinion 16, held that it was clearly unethical for one member of a law firm to act as defense counsel and another to serve as county prosecutor, because this would require one member of the firm to oppose the interests of the state while the other member represented those interests, categorizing those positions as "inherently antagonistic" irrespective of Canon 6 (Conflicting Interests).

Looking to the reciprocal principles in the Colorado Rules of Professional Conduct, Rule 3.5, entitled "Impartiality and Decorum of the Tribunal," provides:

> A lawyer shall not: (a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law; (b) communicate *ex parte* with such a person except as permitted by law; . . .

Rule 8.4 provides in pertinent part:

> It is professional misconduct for a lawyer to: (e) state or imply an ability to influence improperly a judge, judicial officer, government agency or official; . . .

It is that insurmountable *implication* that the prosecutor has the ability to influence the judge that would give rise to professional misconduct.

It would require almost superhuman conduct for the two persons involved in this factual situation to refrain from conscious or unconscious reference to matters before the municipal court, where professional quarters outside the court are so intimately shared. Furthermore, the financial entanglements of

sharing overhead expenses in the law offices are apt to interfere with the attitude each must assume toward the other when one becomes the advocate and prosecutor for the municipality and the other sits as municipal judge, a task requiring impartiality and objectivity.

In view of the foregoing, we feel that the existing arrangement, if not an open invitation to impropriety, cannot help but seem suspect to the Bar and the community and render the task of the municipal judge most difficult. The extra-judicial relationship ought to be severed.

NOTE

1. This practice also may violate Canons 1, 2, 5(c)(1) and 8(c) of the Colorado Code of Judicial Conduct.

Canon 1 of the Colorado Code of Judicial Conduct states: "An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing and enforcing, and should personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved."

Canon 2 provides: "A. A judge should respect and comply with the law and should conduct himself or herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. B. . . . A judge should not lend the prestige of his or her office to advance the private interests of others; nor should a judge convey or permit others to convey the impression that they are in a special position to influence him or her. . . ."

Canon 5(C)(1) states: "A judge should refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of judicial duties, exploit the judge's judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which the judge serves." *See also* Canon 8(C).

The commentary to Canon 8 provides in pertinent part: "A part-time judge who practices law must avoid undertaking or continuing any relationship which precludes the judge from maintaining the integrity of the bench which he or she serves. . . ." This code does not apply to municipal judges except to the extent it is made applicable by statute, municipal charter or ordinance. However, reference to the code by all judicial officers, including municipal judges, is recommended to provide guidance concerning the proper conduct for judges. *See also* 8.4(f) of the Colorado Rules of Professional Conduct.