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Reference is made to your letter wherein you state that you are the municipal judge for the City of X, having been so appointed. As municipal judge your jurisdiction extends to violations of municipal ordinances and the violations of the provisions of Chapters 17A, 17B and 17C of the Code of West Virginia. You ask, "Is it ethical for me to practice criminal law in our local circuit courts so long as the City of X is not interested in the case"?

West Virginia Code § 18-10-2 provides for the creation of municipal courts and the appointment or election of judges of such courts. The criminal jurisdiction of a municipal court was the same as that of a justice of the peace or a magistrate until January 1, 1977. Article VIII, Section 11 of the Constitution of West Virginia, as amended by the Judicial Reform Amendment, provides as follows:

Until otherwise provided by law, all such [municipal] courts heretofore established shall remain and continue as now constituted, and with the same right of appeal, insofar as their jurisdiction to enforce municipal ordinances is concerned; but on and after January 1, 1977, any other jurisdiction exercised by such courts shall cease.

Prior to January 1, 1977, a municipal judge's jurisdiction was coextensive with that of a justice of the peace or a magistrate.

He conducted trials for violations of municipal ordinances and certain state statutes. He also had jurisdiction to conduct preliminary hearings in felony cases. Thus, prior to January 1, 1977, it was improper for a municipal judge to act as an attorney for defendants in criminal trials in any other courts. ABA Op. 242 (1942).

As pointed out above, the Judicial Reform Amendment limited the criminal jurisdiction of municipal judges to violations of municipal ordinances from and after January 1, 1977. However, a municipal judge still exercises criminal jurisdiction and an appeal lies from a municipal court to the circuit court of the county. W. Va. Code §§ 8-2-10, 8-34-1; W. Va. Const., Art. VIII, § 11. Appeals from a municipal court are tried de novo in the circuit court.

A lawyer may in no event practice in the court in which he sits as a judge, even when presided over by another judge. Drinker, Legal Ethics 279 (1953); ABA Op. 142 (1935); N.Y.S.B.A. 228 (1972). Similarly, a lawyer shall not accept private employment in a matter upon the merits of which he has acted in a judicial capacity. DR 9-101(A).

Canon 7A of the Code of Judicial Conduct provides as follows:

A. Part-Time Judge. A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge. A part-time judge:
* * *

(2) should not practice law in the court on which he serves or in any court subject to the appellate jurisdiction of the court on which he serves, or act as a lawyer in a proceeding in which he has served as a judge or in any other proceeding relating thereto.

Whether a lawyer, while occupying a position as a part-time judge, should represent a defendant in a criminal proceeding in a court other than that over which he presides has been the subject of numerous opinions by the American Bar Association and the New York State Bar Association. In an opinion dated February 25, 1972, (N.Y.S.B.A. 228) the New York State Bar Association reviewed its earlier opinions on the subject of criminal practice by part-time judges and stated:

However, a careful review of the ethical considerations leads to the inescapable conclusion that the question [whether a part-time judge with criminal jurisdiction should represent criminal defendants in other courts] should be answered in the negative, so that the judiciary will be held in the high esteem that the public demands and deserves.

In an earlier opinion, N.Y.S.B.A. No. 181 (3-23-71), the New York State Bar Association stated that it would be improper for a city judge with city-wide misdemeanor jurisdiction to engage in the practice of criminal law in other courts, saying:

Such practice would weaken the confidence of the public in the impartiality and objectivity of the judiciary and would be subject to the suspicion that the judge was using the prestige of his position to further his private practice.

The fact that the compensation provided for the part-time judge may be meager does not furnish a justification for a contrary result. Limitations on a part-time judicial officer's private practice circumscribing criminal practice is a small price to pay, as the benefits derived by the public far outweigh the detriment to the individual judge. Appeals from your court would necessarily be tried in the circuit court. The Committee feels that it would be improper for you to try criminal cases in the same court in which appeals from your court are tried de novo. As pointed out in ABA Opinion No. 242 (1942):

In our opinion, acceptance of a judgeship with the duties of conducting misdemeanor trials, and examinations in felony cases to determine whether those accused should be bound over for trial in a higher court, ethically bars the judge from acting as an attorney for the defendants upon such trial, whether they were examined by him or some other judge. Such a practice would not only diminish public confidence in administration of justice in both courts, but would produce serious conflict between the private interests of the judge as a lawyer, and of his clients, and his duties as a judge in advocating important phases of criminal processes in other cases. The public and private duties would be incompatible. The prestige of the judicial office would be diverted to a private benefit, and the judicial office would be demeaned thereby.

One who assumes to act as a judge on one day and as an advocate the next is confronted with inherent difficulties that ought to be avoided and deprecates the employment of such a system. To permit a judge with criminal jurisdiction to practice criminal law would weaken the confidence of the public in the impartiality and objec-

tivity of the judiciary. It could lead to the suspicion that the judge was using the prestige of his position to further his private practice.

We therefore believe that it would be improper for you to represent criminal defendants in the circuit court so long as you occupy the position of municipal judge of the City of X and have criminal jurisdiction, although that jurisdiction is limited to violations of municipal ordinances and violations of Chapters 17A, 17B and 17C of the West Virginia Code.