

MAINE STATE LEGISLATURE

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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

August 4, 1975

Thomas A. Berry, Esq.
District Attorney
Lincoln County Courthouse
Wiscasset, Maine 04578

Dear Mr. Berry:

This will acknowledge receipt of your letter dated July 29, 1975, requesting our opinion (1) whether it is permissible for an attorney in the general practice of the criminal law to hold the position of complaint justice and (2) whether a person in partnership with an attorney who serves as a complaint justice may represent parties in matters which have come before the complaint justice.

It is clear that there is no legal barrier to an attorney engaged in the general practice of criminal law serving in the capacity of complaint justice provided he does not act as counsel in any case in which he has acted in the capacity of complaint justice. A complaint justice must be an attorney-at-law duly licensed to practice in the State of Maine, 4 M.R.S.A. § 161. 15 M.R.S.A. § 706 expressly provides:

"Such complaint justices or other officer shall not have authority to preside at any trial, and neither shall appear as counsel at any criminal case in which he has heard the complaint."

(Emphasis supplied)

Had a more general limitation which would prohibit complaint justices from acting in any criminal cases been intended by the Legislature, the legislation would have said so.

Thomas A. Berry, Esq.
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It may be more appropriate for you to refer the second part of your inquiry to the Ethics Committee of the State Bar Association since it appears to involve more of an ethical question than a legal question. In this connection, I would refer you to Disciplinary Rule 5-105(D) which provides as follows:

"If a lawyer is required to decline employment or withdraw from employment under a disciplinary rule, no partner or associate or any other lawyer affiliated with him or his firm may accept or continue such employment."

Although I do not wish to preempt the functions of the Ethics Committee, it is my own view that DR 5-105(D) quoted above would absolutely preclude a partner of an attorney serving as a complaint justice from appearing before the complaint justice in any matter where the complaint justice would himself be disqualified to act.

Very truly yours,

JOSEPH E. BRENNAN
Attorney General

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