

KENNETH VERCAMMEN & ASSOCIATES, PC
ATTORNEY AT LAW

2053 Woodbridge Ave.

Edison, NJ 08817

(Phone) 732-572-0500

(Fax) 732-572-0030

website: www.njlaws.com

D

MUNICIPAL COURTS ARE BARRED FROM HANDLING DISCOVERY REQUESTS OR ASSISTING THE POLICE OR PROSECUTORS IN PREPARING THE STATE'S CASE.

Canon 1. A Judge Should Uphold the Integrity and Independence of the Judiciary
An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should personally observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

A court should not be "assisting" the Prosecutor to prosecute people or helping the State prepare it's cases. The integrity also is required of court administrators

Canon 2. A Judge Should Avoid Impropriety and the Appearance of Impropriety in All Activities

A. A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

The court staff also cannot assist the Prosecutor. It is the appearance of impropriety for the Court to handle discovery.

Canon 3. A Judge Should Perform the Duties of Judicial Office Impartially and Diligently

Court staff also must be impartial. They cannot be impartial to help the police or prosecutor

A municipal "prosecutor, like the [municipal] judge, must be impartial." State v. Storm, 141 N.J. 245, 254 (1995). Because of the requirement of impartiality, the municipal judge is prohibited from practicing criminal law. R. 1:15-1.

The roles of the judge, prosecutor and defense attorney are distinct. The attorneys are advocates for the respective sides, while the judge is to be the neutral adjudicator. State v. Avena, 281 N.J. Super. 327, 336 (App. Div. 1995). The judge must

remain impartial and detached and may not "take sides". State v. Santiago, 267 N.J. Super. 432, 437 (Law Div. 1993). The trial judge possesses a broad discretion as to his or her participation in the trial, but simultaneously must also maintain an atmosphere of impartiality. State v. Ray, 43 N.J. 19, 25 (1964). See STATE OF NEW JERSEY v TROY SWINT, __ NJ Super. __ (App. Div.) A-5131-97T3

Preparation of the State's case is clearly a prosecutorial function

Preparation of the State's case is clearly a prosecutorial function and is a responsibility that cannot be shifted to others. Any attempt by the prosecutor to place this function upon the clerk, who is an impartial judicial officer, is improper. State v. Perkins, 219 N.J. Super. 121, 125, 529 A.2d 1056 (Law Div. 1987). In State v. Polasky, 216 N.J. Super. 549 (Law Div 1986) Judge Haines discussed the municipal prosecutor's role in connection with discovery, and added:

There is further reason for requiring the prosecutor to be responsible. In our court system, the prosecutor, contrary to an ordinary advocate, has a duty to see that justice is done. State v. D'Ippolito, 19 N.J. 450, 549-550 [117 A.2d 592] (1955). He is not to prosecute, for example, when the evidence does not support the State's charges. Consequently, the prosecutor has an obligation to defendants as well as the State and the public. Our discovery rules implicate that obligation, an obligation which can be discharged by no one else. [216 N.J. Super. at 555, 524 A.2d 474]

As set forth in State v Prickett; 240 NJ Super 139, 146 (App. Div 1990), it is the municipal prosecutor who selects the State's witnesses, requests postponements for the State, complies with discovery rules, requests dismissal if the State cannot make out a case, and does all else necessary to prepare and present the State's cases in the municipal court. See also Position 3.11, "The Role of the Prosecutor, *Report of the Supreme Court Task Force on the Improvement of Municipal Courts* (1985)".

We have the problem of a part-time municipal prosecutor responsible for preparing cases for trial who abandons a prosecutorial function to the municipal court clerk who assumes it. R. 1:9-1 indicates that the court clerk may issue a subpoena,

but makes no provision for service by the court clerk nor does it give the clerk the authority to excuse any witness absent instructions from the municipal court judge. The municipal court clerk should not become involved in the preparation of the State's case. See *N.J. Municipal Court Clerks' Manual*, §2.3, pp. 69-70 (A.O.C. 1985) which states:

"The municipal prosecutor has the responsibility for determining what witnesses he wants and of preparing his own subpoenas. However, if the municipal prosecutor lacks secretarial help, court personnel may *assist* in typing the subpoenas." State v Prickett 240 NJ Super at 145. However, the court should not ever act as the prosecutor's assistant. The court must be neutral. Courts are never permitted to handle discovery requests ever. That would be a violation of a defendant's right to an impartial court.

Because the State is the municipal prosecutor's client, a failure to discharge the obligations of his office is a violation of a prosecutor's professional responsibility to represent the client diligently. When a prosecutor has available relevant evidence bearing on a prosecution, and the prosecutor's failure to present that evidence in the course of trial results in acquittal, that prosecutor has not diligently discharged his or her duty to prepare and present the State's case. Furthermore, when the failure to prepare for trial and present relevant evidence prejudices the State's case, the prosecutor's deviation from that duty may be so severe as to constitute gross negligence. Matter of Segal 130 NJ 468 (1992)

Very truly yours,

KENNETH A. VERCAMMEN

KAV/
Enclosure