

ADVISORY COMMITTEE
ON STANDARDS OF JUDICIAL CONDUCT

OPINION NO. 2 - 2019

RE: Propriety of a part-time magistrate judge accepting a part-time position as a background investigator for the South Carolina Department of Probation, Parole and Pardon Services.

FACTS

A part-time magistrate judge has been offered a part-time position with the South Carolina Department of Probation, Parole and Pardon Services as a background investigator. The investigations are for applications for new hires for the agency. The position involves calling references and compiling other investigative information together in the hire packet. The position requires a certified law enforcement officer, active or retired, with ten years' experience. The inquiring judge meets the requirements for the position and has completed numerous hire packets as part of previous employment. As a background investigator, the inquiring judge would be working from home.

CONCLUSION

A part-time magistrate judge may accept a part-time position with the South Carolina Department of Probation, Parole and Pardon Services as a background investigator.

OPINION

Part-time judges are not prohibited from employment by a business entity. *See*, Application of the Code of Judicial Conduct, Section C; *see also*, Canon 4D(3). In addition, part-time judges are not required to comply with the provision of the Code which prohibits judges from accepting an "appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy...." Canon 4C(2). Here, the question involves neither employment by a business entity nor appointment to a

governmental position, but rather a blend -- can a part-time judge be employed by a government agency?

In Opinion 19-2009, we addressed the propriety of a part-time magistrate working as an assistant investigator/inspector in the office of Inspector General on a military installation. We found that such employment was permitted, provided that if any other employee of the Inspector General office appeared in the magistrate's court, the judge was required to disqualify himself or herself. That logic applies to this matter as well. Thus, the inquiring judge may accept part-time employment as a background investigator for the South Carolina Department of Probation, Parole and Pardon Services. However, if the South Carolina Department of Probation, Parole and Pardon Services (or its employee) or any person who is the subject of the judge's background investigation appears before the magistrate's court, the judge should recuse himself or herself. The judge is also cautioned that if such employment causes frequent disqualifications which prevent the judge from diligently carrying out judicial duties as described, such employment should not be continued.

S/ LETITIA H. VERDIN
LETITIA H. VERDIN, CHAIR

S/ USHA JEFFERIES BRIDGES
USHA JEFFERIES BRIDGES

S/ KEITH M. BABCOCK
KEITH M. BABCOCK

January 25, 2019.