

ADVISORY COMMITTEE ON STANDARDS OF JUDICIAL CONDUCT

OPINION NO. 4 - 2023

RE: Propriety of a part-time municipal judge serving when judge's law firm represents the City in a pending civil matter.

FACTS

A lawyer has been asked to serve as a part-time municipal judge for a City. Part-time judges can also continue practicing law. The judge's law firm has been retained by the S.C. Municipal Insurance and Risks Financing Fund (SCMIRF) to represent the City in a pending civil matter. The prospective judge inquires as to whether service as a municipal judge would be appropriate under these circumstances.

CONCLUSION

A part-time municipal judge may not serve where the judge's law firm represents the City in a pending civil matter.

OPINION

A continuing part-time judge is not required to comply with the provisions of Canon 4(G) that prohibit a judge from practicing law. Rule 501, Application C(1)(b), SCACR. A part-time judge can practice law so long as he or she conforms with the provisions of the Code of Judicial Conduct as applied to part-time judges. However, Canon 2 mandates that judges avoid the appearance of impropriety in their activities and conduct themselves "in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Rule 501, SCACR.

In Opinion 15-2002, we found that because a municipal judge had financial ties to the City, it would be improper for the judge to also represent city employees in worker's compensation cases against the City. While here, the judge's firm will be representing, rather than suing the City, it

could still lead to the appearance of partiality in favor of the City.¹ Thus, it would not be appropriate for the prospective judge to accept the appointment while the judge's law firm represents the City.

s/ Usha Jeffries Bridges
USHA JEFFRIES BRIDGES, CHAIR

s/ William H. Seals, Jr.
WILLIAM H. SEALS, JR.

s/ Keith M. Babcock
KEITH M. BABCOCK

April 13, 2023

¹ Although Canon 3(F) permits the parties to waive the Disqualification under Canon 3(E), the present situation would create an abuse of the option. Canon 3(F) states: “[a] judge disqualified by the terms of Section 3E may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification.” The problem with applying Canon 3(F) under the current circumstances is that it would have to be utilized in every case the judge presides over. The intent of the remittal procedure is to allow an opportunity, when an occasional disqualification occurs, for the judge to nonetheless preside over the case. It would defeat the purpose of the Disqualification provision, and be an abuse of the Remittal of Disqualification for it to be used in every case.