

**ADVISORY COMMITTEE ON STANDARDS OF JUDICIAL CONDUCT
OPINION NO. 6 - 2023**

RE: Propriety of a part-time municipal judge serving as a City Attorney for a different municipality.

FACTS

A candidate for municipal judge currently serves as City Attorney in a municipality different from the one where he or she would serve as judge. As City Attorney, the candidate: attends City Council meetings; advises the mayor and the Council; drafts ordinances, resolutions, and contracts; and provides general legal advice. The City Attorney does not participate in criminal matters or advise the police other than on contract matters and Freedom of Information requests. The candidate is being considered for the position of municipal judge for another city in the same county. The candidate seeks an opinion as to the propriety of simultaneously serving in these positions.

CONCLUSION

A part-time municipal judge may also serve as City Attorney for a different municipality.

OPINION

Part-time judges are permitted to practice law, provided they do not practice law in the court in which the judge serves. See, Rule 501, SCACR, Application of the Code of Judicial Conduct, §C. In Opinion 9-2005, we addressed the question of whether a municipal judge could serve as City Attorney in the same municipality. We stated:

South Carolina law has a provision allowing municipal court judges to act as a city attorney for a city in which he or she is not a judge. S.C. Code Ann. § 8-1-130 (Law. Co-op. Supp. 1998). In Opinion 8-1999, this Committee concluded that a part-time municipal court judge could simultaneously serve as a solicitor in a circuit that does not encompass the municipality to which he serves as judge, provided such a combination would not require frequent recusal or raise an appearance of impropriety. The Committee reasoned that, under § 8-1-130, it was logical that a part-time municipal

court judge could serve as a solicitor in a jurisdiction in which he does not serve as a judge and where the jurisdictions do not overlap in any way.

Id. Applying the law and logic in that opinion to this inquiry, we find that a part-time municipal judge for one municipality may also serve as a City Attorney for a different municipality as there is no overlap in jurisdictions.¹

s/ Usha Jeffries Bridges
USHA JEFFRIES BRIDGES, CHAIR

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

s/ Keith M. Babcock
KEITH M. BABCOCK

May 11, 2023

¹ The inquiry also expressed concern about whether holding both positions would be considered dual officeholding. While this Committee does not opine as to dual-office holding, it does note that S.C. Code Ann. § 8-1-130 is entitled “Holding certain offices and serving as city attorney not dual officeholding” and states:

Any member of a lawfully and regularly organized fire department, county veterans affairs officer, constable, or municipal judge serving as attorney for another city is not considered to be a dual officeholder, by virtue of serving in that capacity, for the purposes of the Constitution of this State.

Id.