

ADVISORY COMMITTEE
ON STANDARDS OF JUDICIAL CONDUCT

OPINION NO. 7 - 2021

RE: Propriety of a part-time municipal court judge also being employed as an assistant solicitor in a circuit that includes the municipality in which the judge serves.

FACTS

An assistant solicitor has recently been sworn in as a part-time municipal court judge for a municipality which is in the county in the same circuit as the solicitor's office. For the time being, the judge is not handling any matters, however minor, that involve General Sessions charges. However, mindful of a judge's ethical duties, the judge seeks an opinion as to whether the judge: 1) may continue to serve as an assistant solicitor and, in his/her capacity as a judge, ethically handle all process of court, including general sessions charges; 2) should move to a different county within the same circuit when acting as an assistant solicitor; 3) should cease all proceedings as a municipal court judge.

CONCLUSION

A part-time municipal court judge may not be employed as an assistant solicitor for a circuit that includes the county encompassing the municipal court on which the judge presides. In addition, serving in both positions may create an issue of dual office holding.

OPINION

Part-time judges are permitted to practice law, subject to several limitations under the Code of Judicial Conduct. Part-time judges are required to comply with Canon 2, which requires that a judge act in a manner that promotes the public confidence in the impartiality of the judiciary, and that the judge must avoid the appearance of impropriety.

The judicial circuits are made up of 2 or more counties. In Opinion 8-1999, we found that

a part-time municipal judge could serve as a solicitor; however, in that case, the judicial circuit in which the judge was employed as a solicitor was different than the judicial circuit in which the judge served. Thus, the jurisdictions did not overlap in any way and we found that the judge could continue employment as an assistant solicitor, provided that such employment did not require frequent recusals.

Here, the inquiring judge would be employed as an assistant solicitor in the same circuit. The judge's service in both roles, with overlapping jurisdiction, could create the appearance of partiality and impropriety and may cause frequent recusals. Thus, the judge should not continue in both positions.

Furthermore, we would be remiss if we did not caution that the judge may also be in danger of dual office holding. This Committee only evaluates inquiries under judicial ethical standards, and we do not issue opinions on dual office holding. However, the Committee is aware of Attorney General opinions that have found that the position of municipal judge would be considered an office for the purpose of dual office holding as would the position of assistant solicitor. See, e.g., S.C.A.G. (Feb. 8, 2005), 2005 WL 469067, [attached hereto](#).

s/ Letitia H. Verdin
LETITIA H. VERDIN, CHAIR

s/ Usha Jeffries Bridges
USHA JEFFRIES BRIDGES

s/ Keith M. Babcock
KEITH M. BABCOCK

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