

**ADVISORY COMMITTEE ON STANDARDS OF JUDICIAL CONDUCT  
OPINION NO. 7 - 2023**

RE: Propriety of a part-time Municipal Livability Court judge who acts as Senior Counsel for a law firm that represents the Municipality.

**FACTS**

A part-time Municipal judge also acts as Senior Counsel for a law firm in the Municipality (as part-time judges are permitted to continue to practice law). The law firm occasionally represents the City and/or local colleges that may also appear in Livability Court. The firm receives cases involving defense of the City through the Insurance Reserve Fund. There is currently only one active case. The judge does not benefit financially from any of the firm's work for the City or other agencies. One of the partners at the firm also serves in an advisory capacity to the City Attorney.

In light of Opinion 4-2023, in which the Committee found a candidate for part-time municipal judge should not serve where the judge's law firm represented the City in a pending civil matter, the inquiring judge asks for clarification as to the propriety of continuing service in both the above-stated capacities.

The inquiring judge serves on the Livability Court, which was created in 2000 to address quality of life issues in the Municipality. The issues that are addressed include public nuisances, loud noise, tourism offenses, preservation of historic properties, environmental issues, and short time rental issues. The goal is not simply to find a defendant guilty or innocent, but to address the issue and create an appropriate resolution.

Generally, an investigating officer responds to a complaint, interviews the parties, and creates a resolution before any trial is needed. If the matter cannot be resolved at that level it would then go before the judge. However, the court has limited trials, with bench trials about once or

twice a month and jury trials about 4 times per year. There are very few requests for a jury trial. The judge cannot recall a time in which any jail time was issued. Most often, a decision is rendered directing a defendant to comply with the ordinance, with either a suspended fine or ongoing monitoring to ensure compliance.

### **CONCLUSION**

A part-time Municipal judge, serving on the Livability Court, may also serve as Senior Counsel to a law firm that occasionally represents the Municipality and/or local colleges that may also appear in Livability Court, provided the judge utilizes the disqualification and remittal procedures provided for in Canons 3E and 3F.

### **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 4-2023, however, we addressed the situation in which a candidate for Municipal Judge was a member of a firm that represented the Municipality in a civil matter. We noted that 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 impartiality of the judiciary. We found that the candidate should not serve because the judge's firm would be representing the City in which the judge served, which could lead to the appearance of partiality in favor of the City.

In Footnote 1 of Opinion 4-2023, we considered whether the judge could serve if he or she utilized the waiver of disqualification procedure in Canon 3F, but found it would create an abuse of the option. Canon 3F 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.

However, there, we found that the judge would have to utilize the procedure in every case the judge presided over, instead of an occasional disqualification. With the amount of terms of court, we found this would be abuse of the remittal procedure.

On first glance, it would appear that Opinion 4-2023 directly controls the situation presented here. However, while the Livability Court is a municipal criminal court, it is vastly different than the traditional Municipal Courts, and has more of a civil slant. As set forth above, the Livability Court addresses issues of public nuisances, loud noise, tourism offenses, preservation of historic properties, environmental issues, and short time rental issues. The court has a mediative nature (versus purely adversarial), with a focus on compliance with city ordinances instead of punishment. Moreover, the court has few terms of court, and the use of the waiver of disqualification would not rise to the same level at issue in Opinion 4-2023. The unusual mediative or civil character of the of the Livability Court, coupled with the small number of terms of court, distinguishes it from our previous decision.

Thus, we find that a part-time Livability Court judge who also serves as Senior Counsel for a firm that occasionally represents the City and/or local colleges that may also appear in Livability Court may continue to serve, provided that the judge utilize the disqualification (by disclosing the law firm's representation of the City) and remittal procedures in any matters that come before the court for trial or for violation of court order.<sup>1</sup> However, if the number of disqualifications that are not waived rises to a level that creates an administrative burden such that

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<sup>1</sup> For matters that are resolved by the investigating officer prior to trial in which the judge merely accepts the agreement of the parties and enters an order, no disqualification procedure is needed.

the judge is unable to properly perform judicial duties, then the judge must re-evaluate either continued service on the bench or continued service as Senior Counsel for the firm.

s/ Usha Jeffries Bridges  
USHA JEFFRIES BRIDGES, CHAIR

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

s/ Keith M. Babcock  
KEITH M. BABCOCK

July 5, 2023