

ADVISORY COMMITTEE
ON STANDARDS OF JUDICIAL CONDUCT

OPINION NO. 9 - 2022

RE: The propriety of a full-time Municipal Court judge being married to the City Attorney.

FACTS

A candidate for a full-time Municipal Court judge is married to the City Attorney. The position of Municipal Court judge entails presiding over bench trials, jury trials, and preliminary hearings. The City Attorney does not prosecute cases. Instead, the City Attorney's job is limited to drafting and reviewing contracts, advising City Council on legal matters, making interpretations of statutes during council meetings, and acting as parliamentarian.

CONCLUSION

A full-time Municipal Court judge should not serve where the judge's spouse is the City Attorney.

OPINION

We have, in the past, addressed a variety of situations involving a magistrate or municipal judge and the employment of a judge's spouse. However, we have yet to address this specific scenario. We did address, in Opinion 5-2011, the propriety of an attorney serving as a part-time municipal court judge where the attorney's law partner also served as city attorney. In that case, the city attorney had the same roles as the City Attorney in the facts presented and did not appear in municipal court or advise the police on any legal matters. We determined that the attorney should not serve as a municipal judge where the potential judge's law partner was serving as the city attorney. Our opinion in 5-2011 was based, in part, on South Carolina Bar Ethics Opinion 1994-02 which found that neither a part-time judge, nor a member of the judge's law firm, should

serve as city attorney. The South Carolina Bar opinion cited various reasons why a part-time municipal judge could not serve as city attorney, a question not presented here. It is important to note that the Bar's reasoning for the prohibition was that:

The appearance of impropriety standard¹ would exclude a part-time judge from all proceedings involving parties having business with the city so long as the judge had an attorney-client relationship with the city.

That opinion then considered whether a member of the judge's law firm could serve as city attorney and, applying Rule 1.10 of the Rules of Professional Conduct,² found that if a member of a law firm is disqualified from certain representation, the entire firm would also be disqualified.

In addressing the question presented in our Opinion 5-2011, we found (as the Bar did) that the jurisdiction of the municipal court includes "trying all cases arising under the ordinances of the municipality" (S.C. Code § 14-25-45) and the city attorney's duties may include drafting the ordinances or advising on policies in reference to their enforcement. The city judge would then rule on the same ordinances from the bench. Thus, we determined that service by one law partner as a municipal judge and one law partner as city attorney could raise the appearance of impropriety and cause the public to question the impartiality of the judiciary. Op. No. 5-2011.³

Here, the "partnership" in question is of a marital nature but we believe the same logic applies. Even though the City Attorney here does not appear in Municipal Court, the City Attorney would be providing legal advice to City Council, perhaps even drafting ordinances and their penalties. The ordinances, or violators thereof, would then come before the Municipal Judge.

¹ Canon 2, Rule 501, SCACR states: "A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." The commentary to that section notes that "[a] judge must avoid all impropriety and appearance of impropriety."

² Rule 407, SCACR contains the Rules of Professional Conduct applicable to attorneys.

³ Our opinion noted that Rule 1.10 did not specifically address disqualification in the context of a part-time judge and that rule did not form the basis for our conclusion.

Additionally, the City Council makes employment decisions regarding judges which the City Attorney presumably advises on, creating a further conflict. Finally, the mere fact that the judge is married to the City Attorney could create the appearance of partiality in favor of 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

May 24, 2022