RE: Propriety of a part-time municipal ministerial recorder also being employed full-time by another department within the City.

FACTS

A full-time municipal judge is planning to retire. The judge has accepted another full-time position with the City in the Human Resources division. The judge intends to remain as a part-time ministerial recorder, serving on weekends only, whose duties would include issuing arrest warrants, signing search warrants, and setting bonds. In this part-time position, the judge would not hear guilty pleas or preside over any courtroom proceedings such as preliminary hearing or trials.

CONCLUSION

A part-time ministerial recorder should not continue other full-time employment with a city department as it would cause the impartiality of the judge to be questioned.

OPINION

In Opinion 16-2022, we addressed an almost identical situation. In that inquiry, the municipal judge was also a part-time/weekend judge. The judge set bonds, issued arrest and search warrants, and took guilty pleas. The judge planned to accept a position with the City’s revenue department. We determined that because the judge would also be employed by the City, the judge’s partiality could reasonably be questioned in every case in which the City was involved. Thus, the judge would be forced to disqualify himself or herself in every case.¹

¹ We noted that the judge could then use the remittal procedure outlined in Canon 3F, but doing so would be overly cumbersome and time-consuming.
Here, like the judge in Opinion 16-2022, the inquiring judge would also be employed by the City. Thus, the same partiality concerns are present in this situation. While the inquiring judge will not handle guilty pleas, unlike the judge in Op. 16-2022, the judge will still be setting bonds and issuing arrest and search warrants, pursuant to requests of other City employees (the police department).

s/ Usha Jeffries Bridges  
USHA JEFFRIES BRIDGES, CHAIR

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

s/ Keith M. Babcock  
KEITH M. BABCOCK

December 5, 2022