

ADVISORY COMMITTEE  
ON STANDARDS OF JUDICIAL CONDUCT

OPINION NO. 19-2001

RE: Propriety of a Municipal Clerk for the Town of Blacksburg holding the position of Records Clerk for the Blacksburg Police Department. Propriety of the Municipal Clerk taking an appointed position of Victims Advocate for the Town of Blacksburg.

FACTS

A Cherokee County Magistrate, who is also the Municipal Judge for the Town of Blacksburg, requests the committee's advice regarding the propriety of the Municipal Clerk of Blacksburg, also holding the position of Records Clerk for the Police Department, and the propriety of the Clerk accepting an appointed position of Victims Advocate along with her other duties. The Judge questions the propriety of the Clerk holding both positions.

CONCLUSION

It is improper for a Municipal Recorder to also hold the position of Records Clerk for the Police Department. It is improper for the Clerk to accept the appointed position of Victims Advocate.

OPINION

A Municipal Clerk exercises ministerial tasks. According to Section 14-25-35 of the South Carolina Code, "[t]he clerk of the court shall keep such records and make such reports as may be determined by the state court administrator." "The [municipal] court shall also have all such powers, duties, and jurisdiction in criminal cases made under state law and conferred upon magistrates." S. C. Code Ann. Section 14-25-45 (Law. Co-op. 1975 and 2000 Supp.). While the Clerk's powers are limited, these tasks require the clerk to work closely with the Judge and Magistrate.

Rule 501, Canon 1 of the Judicial Code requires a judge to "uphold the integrity and independence of the judiciary." Rule 501, Canon 1, SCACR. The commentary to Canon 1 states that "[p]ublic confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility." In this situation, the public may question the impartiality and independence of the judiciary if a Municipal Clerk also held the positions of Records Clerk to the Police Department and Victim's Advocate. Likewise, in Opinion No. 4-1986, the committee concluded that it was improper for an administrative assistant to the Chief of Police to also serve as a Ministerial Recorder.

A judge must "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Rule 501, Canon 2, SCACR. According to the commentary to Canon 2, "the test for appearance of impropriety is whether the conduct would create in a reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired." Rule 501, Canon 2, SCACR. "A judge must avoid all impropriety and appearance of impropriety." Rule 501, Canon 2, SCACR. In the immediate situation, it would not be unreasonable to question the impartiality of a judge and magistrate who works closely with a municipal clerk holding these three positions. (See also

Advisory Opinion Nos. 4-1986, 11-2000).

In conclusion, it is improper for the Municipal Clerk of Blacksburg to also hold the position of Records Clerk for the Police Department of Blacksburg, and to accept the appointed position of Victims Advocate for the Town of Blacksburg because it would create "the appearance of impropriety." Rule 501, Canon 2, SCACR.

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A. CAMDEN LEWIS, CHAIRMAN

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JAMES A. SPRUILL, III

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HOWARD P. KING

May 31, 2001