

JUDICIAL ETHICS COMMITTEE

ADVISORY OPINION NO. 07-01

April 12, 2007

The Judicial Ethics Committee has received the following inquiry:

May part-time Municipal Court Judges be precluded from representing criminal defendants in state court where police officers from the municipality are expected to be called as a material witness(es)?

Discussion

The portion of the Code of Judicial Conduct dealing with part-time judges defines such judges as follows:

A continuing part-time judge is a judge who serves repeatedly on a part-time basis by election or under a continuing appointment. A judge designated as a Senior Judge shall be considered a continuing part-time judge. Part-time general sessions judges, part-time juvenile judges, part-time municipal judges, part-time divorce referees, part-time juvenile referees, and part-time judicial commissioners shall be considered continuing part-time judges.

A continuing part-time judge:

(1) is not required to comply:

(a) except while serving as a judge, with Canon 3B(9) (public comments about cases); and

(b) at any time with

Canon 4C(2) (governmental committees)

Canon 4D(3) (business interests)

Canon 4E(1) (fiduciary activities)

Canon 4F (arbitrator or mediator)

Canon 4G (practice of law)

Canon 4H (compensation and reimbursement)

Canon 5B(2) (candidates seeking appointment)

(2) who is a part-time municipal judge with municipal ordinance violation jurisdiction only is also not required to comply with Canon 5A(1) (political restrictions).

(3) shall not practice law in the court on which the judge serves or in any court subject to the appellate jurisdiction of the court on which the judge serves, and shall not act as a lawyer in a proceeding in which the judge has served as judge or in any other proceeding related thereto.

Tenn. Sup. Ct. R. 10, *Application of the Code of Judicial Conduct*, (C)(1)-(3).

Thus, continuing part-time judges are not required to comply with a number of provisions of the Code of Judicial Conduct and, additionally, part-time municipal court judges, with municipal ordinance violation jurisdiction, are exempted from the restrictions set out in Canon 5A(1) on certain political activity.

The Committee previously has issued several opinions which are relevant to the present inquiry. In Advisory Opinion No. 00-03, the Committee considered, in part, whether an attorney who had represented a client in a criminal case could later, as a continuing part-time juvenile court judge, hear a case in which the former client was charged with sexual molestation. The Committee concluded that certain factors, such as whether the criminal defendant was a current or past client of the judge, determined whether recusal was required.

In Advisory Opinion No. 93-3, the Committee concluded that a part-time judicial commissioner could “appear as a lawyer in other courts in criminal cases provided it does not relate to a proceeding in which he/she has served in a judicial capacity or in any other proceeding related thereto.”

In Advisory Opinion No. 05-01, the Committee concluded that an appointed part-time divorce referee could “appear[] as an attorney before the circuit court judge making the referee appointment, so long as it was not a matter with which the appointee had dealt as a referee.” Additionally, the Opinion reviewed the several sections of the Code of Judicial Conduct setting out the limitations regarding in which court continuing part-time judges could practice and concluded that the “provisions are intended to prevent ‘part-time judges,’ as defined broadly by the Canons, both from appearing as an attorney in a court whose appeals go to the court of the part-time judge and from appearing in the part-time judge’s own court, presumably before a special judge.”

In Advisory Opinion No. 95-2, the Committee considered, in part, whether a continuing part-time general sessions judge of one county could maintain a law practice in another county in the same judicial district. The Committee noted that the inquiry, as it related to criminal matters, was “problematic” for the following reasons:

The essential nature of the General Sessions Judge’s duties involves frequent contact with district and assistant attorney generals and criminal defense attorneys relative to approval or rejection of plea bargain dispositions, not to mention adjudication of contested criminal prosecutions. Similarly, the General Sessions Court Judge maintains a close, institutional working relationship with the Circuit Court Judge in

terms of setting bail, binding cases to the Grand Jury, certifying issues of forfeitures and the like.

However, the Committee concluded that the judge could “maintain a law practice in other courts involving civil and criminal litigation so long as the integrity and the impartiality of the judiciary is not compromised, private interests of others are not improperly and unethically advanced and the judge is not acting as an attorney in a proceeding in which he/she has previously served as judge or in any other proceeding related thereto.”

Applying the Code of Judicial Conduct’s exemptions to continuing part-time judges, as well as previous Advisory Opinions of this Committee, we conclude that there is no ethical impropriety in a part-time municipal court judge’s, with municipal ordinance jurisdiction only, practicing criminal law in General Sessions, Criminal, and Circuit Courts in the same judicial circuit in which the part-time judge holds court.

FOR THE COMMITTEE:

ALAN E. GLENN, JUDGE

CONCUR:

CHANCELLOR THOMAS R. FRIERSON, II
JUDGE CHERYL A. BLACKBURN
JUDGE JAMES F. RUSSELL
JUDGE BETTY THOMAS MOORE
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