



Advisory Committee on the Code of Judicial Conduct

Hon. Frank H. Allen, Jr. Chairman
Hon. Thomas A. Donnelly
Prof. William T. MacPhearson, Jr.

January 19, 1995

RE: Judicial Advisory Opinion 95-01

Dear

The Judicial Advisory Committee is in receipt of your letter dated December 14, 1994. You have asked our opinion regarding whether it would be proper for a municipal court judge to accept employment with the county sheriff's office located in the same county as the municipal court in which you presently serve. It is our view that a municipal court judge is barred from accepting such employment under the Code of Judicial Conduct.

Your letter states that the contemplated position of employment with the county sheriff's office would primarily be administrative in nature, requiring little, if any, active patrol duty. Your letter also indicates that the job with the sheriff's office would involve law enforcement work within the same county as the municipal court where you serve. Your letter does not indicate whether your present position as a municipal judge is full time or whether the administrative position with the sheriff's office would be full or part time.

We think if either position is deemed a full time position, this factor would preclude your acceptance of the job with the sheriff's office. A municipal judge is barred from accepting other employment during the hours that he or she is required to serve. Canon 21-500(I) of the Code of Judicial Conduct provides in relevant part:

Conflicting compensated activities. A judge shall not hold any other paid position, judicial or otherwise, which conflicts with the hours and duties the judge is required to perform for every judicial position. A judge shall devote the number of hours that is required by any judicial position held. In no event shall other paid employment or compensable activity hours be performed simultaneously.

SCRA 1986, 21-500(I) (Repl. 1994) (emphasis added); see also Judicial Advisory Opinion No. 86-11 (a copy of which is attached). Therefore, if you are a full-time municipal court judge, in our opinion, you would be barred from accepting other outside, non-judicial employment.

Even if your municipal court judgeship is deemed to be a part-time position and you are able to perform the other job without interfering with the hours and duties of your judgeship, we believe there are other impediments which would preclude you from accepting employment with the county sheriff's office while you serve as a municipal judge. First, serving in the county sheriff's office during your term as a municipal judge would appear to interfere with the integrity and independence of the judiciary, contrary to SCRA 1986, 21-100 (Repl. 1994). Second, holding both positions simultaneously gives the appearance of impropriety, contrary to SCRA 1986, 21-200 (Repl. 1994). Third, holding the two positions simultaneously may also give rise to the appearance of impropriety because of the duty of a judge to perform his or her judicial duties impartially and diligently. SCRA 1986, 21-300 (Repl. 1994). Judicial Advisory Opinion No.88-2 (a copy of which is attached). According to your letter, in your capacity as a law enforcement officer in the sheriff's office, you would not be filing charges in your own court; however, others in the sheriff's office would occasionally file charges there. Your letter also indicates that a county deputy sheriff rarely cites alleged law violators into your court, and, in such event, you would recuse yourself from hearing such case.

We agree that if a county deputy sheriff were to cite an individual into your court, recusal on your part would be proper in order to ensure that your judicial independence and impartiality would not be compromised. However, we do not believe that your recusal would be sufficient to overcome the appearance of impropriety that your acceptance of a position in the sheriff's office would create.

Because we find that a municipal judge who also serves as a sheriff's deputy in the same county creates the appearance of impropriety, contrary to Judicial Canon 21-200, we do not reach the issue of whether simultaneously holding the two positions would violate the separation of powers clause of the New Mexico Constitution. N.M. Const. art. III, § I.

Yours very truly,

Frank H. Allen, Jr.
Chairman, Judicial Advisory Committee

Enclosures