Judicial Ethics Advisory Committee

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Supreme Court Chief Justice (Former)

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Attorney

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Circuit Judge Retired

PRESS RELEASE

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FOR IMMEDIATE RELEASE

July 16, 2018

The Arkansas Ethics Advisory Committee today issued an Advisory Opinion to Ralph Myers, Attorney at Law.

The opinion of the Committee directly follows this release.
July 16, 2018.

Ralph Myers, III  
Attorney at Law  
P.O. Box 498  
McCrory, AR 72101

Dear Mr. Myers:

Your letter of June 15, 2018 states that you currently serve as the City Attorney of McCrory. Your primary responsibilities include attending council meetings, advising the council, preparing ordinances and providing administrative services for the city.

Woodruff County has one local district judge, with departments in McCrory, Patterson and Augusta/Cotton Plant. The position is part-time. You have asked whether you would be permitted to serve as the district judge, and retain your position as the city attorney. As the district judge, you would be presiding over the criminal docket from the City of McCrory.

Discussion: Rule 2.11 of the Arkansas Code of Judicial Conduct requires that a judge disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned. Rule 2.11 is applicable to part-time judges.

We have addressed the issue of part-time judges and private law practice in prior opinions. In 97-04, we concluded that a lawyer could not concurrently serve as a municipal judge for Sulphur Springs and an attorney for the city. We stated that “Your private practice should be as far removed as possible from your court and the city you serve.” Similarly, in 99-02, we concluded that an individual serving as the Garland County Attorney should not also serve as the Garland County District Judge. “We conclude that holding such dual roles in the same county is both unwise and imprudent.”
On the other hand, in 05-03, we found that the part-time City Judge in Tuckerman would be permitted to serve as the City Attorney for another municipality in the same county. In 2000-11 we discussed a situation with a person serving as city attorney in one city (West Fork) and municipal judge in another city in the same county. Although we found no violation, we added this cautionary advice which we find applicable here: “Neither Arkansas law nor the Code of Judicial Conduct prohibits a person who practices law as an assistant city attorney from one city from being a part-time municipal judge in another city. That person, however, should be very sensitive to the fact that conflicts can and will occur and should be mindful of numerous provisions of the Code that would be applicable. We emphasize that a continuing part-time municipal judge must make the judicial office first in service and priority.”

We find the same situation presented here as in the first two opinions (Sulphur Springs and Garland County) cited above. Unlike the latter two opinions (Tuckerman and West Fork), you would be presiding over criminal cases brought by the City of McCrory, while at the same time being the city attorney for the City. Litigants appearing before the court could justly be concerned of judicial fairness when the judge is also serving as the attorney for the city (even though not appearing as the prosecutor). The court must affirmatively serve to prevent even the appearance of impropriety, and must assure the integrity and independence of the judiciary.

As you pointed out, Woodruff County is a sparsely populated county with a limited legal community. The Arkansas Judiciary webpage indicates that less than 20 licensed attorneys are resident. Ark. Code Ann. §16-17-103 requires that a district judge be a qualified elector from the geographical area. However, the Code of Judicial Conduct applies to all counties, regardless of the number of resident attorneys.

**Conclusion:** the Code of Judicial County does not permit a person to serve as a city attorney and preside over the district court for that city.

For the committee,

Howard W. Brill

Judge John Cole and Judy Simmons Henry concur