

ETHICS ADVISORY PANEL
Opinion #93-17, Request #347
Issued May 12, 1993

An advisory opinion is requested as to whether and under what circumstances a part-time municipal court judge of Municipality X or the judge's law firm partners may represent clients whose interests are adverse to Municipality X. Under the ordinances of Municipality X, the municipal court has jurisdiction over matters arising under the housing, zoning, traffic parking and certain other municipal ordinances, as well as specified state statutes relating principally to motor vehicles and traffic. There is at least one other municipal court judge in Municipality X, and under the municipal ordinances other persons may be temporarily designated to sit as municipal court judge if a regularly appointed judge is unable to perform his duties for any reason.

Rhode Island General Laws Section 8-18-8, effective January 1, 1993, provides that municipal court judges are subject to the Canons of Judicial Ethics and to discipline by the Commission on Judicial Tenure and Discipline (RIGL Title 8, Chapter 16). The Rules of the Rhode Island Supreme Court governing this Ethics Advisory Panel confer no authority to interpret the Canons of Judicial Ethics. In particular, under Rule 5, there is no presumption that an attorney relying on the opinion he has requested by this Panel has abided by any body of rules other than the Rules of Professional Conduct.

Accordingly, the Panel is unable to advise as to the restrictions on the municipal court judge's law practice. Restrictions on a judge's conduct are governed by the Canons of Judicial Ethics. However, those Canons must be our starting point in responding to the second part of the inquiry -- the restrictions on other attorneys in the judge's law firm that may arise under the Rules of Professional Conduct.

Under the Canons of Judicial Ethics, a municipal court judge would appear to be a "Continuing Part-Time Judge" as to which Applications Section C of the Canons excuses compliance with specified Canons that impose restrictions on a full-time judge's acting as an arbitrator or executor, practicing law, and engaging in certain political activities and fundraising. Applications Section C specifically provides that a continuing part-time judge

"shall not practice law in the court on which the judge serves or in any tribunal 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 a judge or in any other proceeding related thereto."

Except for the Application Sections and corresponding definitions, the Canons of Judicial Ethics contemplate that a judge will be a full-time judge and will not practice law (Canon 4G). It is therefore not surprising that we find little guidance in the substantive provisions of the Canons as to what restrictions, if any, are applicable to the judge's law partners. Canon 3E provides that a judge should disqualify himself or herself in a matter in which the judge or a lawyer with whom the judge practiced when the judge was in private practice was involved, or if a lawyer in the proceeding is related to the judge or would have more than a de minimis interest that could be affected by the proceeding. On a more general note, Canon 2 provides in part:

A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities. . . .

(2) A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge.

The converse of this rule is found in the Rules of Professional Conduct. The Preamble of those Rules provides that "a lawyer should avoid even the appearance of professional impropriety." Under Rule 8.4(e) it is professional misconduct for a lawyer to:

"state or imply an ability to influence improperly a government agency or official."

But aside from these general injunctions, there is no Rule of Professional Conduct that expressly restricts the practice of the law firm in which the part-time judge remains an active member. Rule 1.10 and 1.11 of the Rules of Professional Conduct normally provide guidance as to imputed disqualification. Rule 1.10 is based upon a firm member's conflict of interest or knowledge of confidential information, and does not extend to a firm member's disqualification under any other body of rules circumstances.

The imputed disqualification under Rule 1.11 applies to specific matters, agencies and information. That Rule would

be expressly applicable to the judge's law firm were the judge to retire from the judge's public position; it should equally be applicable to the judge's law firm while the judge is an active member of that firm. By analogy to that Rule, no member of the judge's law firm could act in a matter in which the judge participated as judge unless the judge were screened from any participation in the matter and were apportioned no part of the fee therefrom and written notice were promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule. In this context, we would consider the appropriate public agency to be the municipal official or council that appoints or confirms the appointment of the judge.

The Panel concludes:

1. No member of the judge's law firm may appear in a matter before the judge.

2. No member of the judge's law firm may appear in any aspect of any matter that the judge participated in as a judge unless the judge is effectively "screened" from direct or indirect participation or benefit in or from that matter in accordance with the "Chinese Wall" procedures specified in Rule 1.11(a).

3. The Rules of Professional Conduct do not otherwise impose black letter restrictions on the judge's law firm's representation of clients with interests adverse to Municipality X. The law firm should, however, avoid the appearance of impropriety or the suggestion that it can influence the court on which its member sits.

The Panel's guidance is restricted to interpretations of the Rules of Professional Conduct and does not extend to issues under the Canons of Judicial Ethics, the State Ethics Code or any other rules, regulations or laws that may have a bearing on the issues raised by this inquiry.