

**SUPREME JUDICIAL COURT  
ADVISORY COMMITTEE ON ETHICAL OPINIONS  
FOR CLERKS OF THE COURTS  
JOHN ADAMS COURTHOUSE  
ONE PEMBERTON SQUARE  
BOSTON, MASSACHUSETTS 02108-1750**

617-557-1161

2008-1

January 30, 2008

Dear Deputy Assistant Register:

This is in response to your letter of January 16, 2008 in which you request an opinion on whether you may run for the position of Register of Probate without having to take an unpaid leave of absence. The Register of Probate in the court where you work will not be seeking reelection, and you would like to become a candidate for the position. Section 8.02F of the Trial Court Personnel Policies and Procedures Manual states that requests to the Chief Justice for Administration and Management for approval to run for office without taking a leave of absence must be accompanied by an opinion from the Advisory Committee on Ethical Opinions for Clerks of the Courts regarding the existence of any conflict of interest.

You are a deputy assistant register. You state that because your office is small, it would be a hardship for the office, as well as for you, if you were required to take an unpaid leave of absence. You also state that if you have competition for the position, there would be minimal political activity conducted during the campaign.

As we have stated in previous opinions, we view the role of this Committee as limited to providing advice on the implications that the Code of Professional Responsibility would have on your candidacy. To that end, we repeat the advice we have given on prior occasions, most recently in Opinion 2006-3.

"We draw your attention to the following provisions of the Code. Under Canon 3 a Clerk-Magistrate is required to devote the entire time during normal court hours to the duties of the office. Canon 4 requires a Clerk-Magistrate to perform the duties of the office impartially and in a manner 'that promotes public confidence in the integrity and impartiality of the judicial branch.' In addition to being impartial, a Clerk-Magistrate must also convey the appearance of impartiality. (See Canon 4(A).) Also, Canon 5(A) prohibits a Clerk-Magistrate from engaging 'in activities which might detract from the dignity of the office of Clerk-Magistrate or interfere with the performance of the duties of the office.' Opinion 95-5.

"In Opinion Nos. 2000-2 and 3 we further stated our opinion that inquiries regarding the

need for any leave of absence are within the domain of the Chief Justice for Administration and Management. 'Decisions as to the need for a leave of absence seem to us to be management decisions beyond the mandate of this Committee, depending in part on factors relating to the office of the prospective candidate, the office where the position is in contest, and the nature of the campaign. For purposes of compliance with the Code, your adherence to the advice set forth above would be sufficient.' " Opinion 2006-3.