

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

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2008-2

May 28, 2008

Dear Assistant Clerk :

This letter is in response to your request dated April 16, 2008 for an advisory opinion. You have been appointed to serve as an Assistant Clerk-Magistrate in the _____ Clerk's Office. You have indicated you have considered running for election to either the _____ City Council or _____ School Committee, both part-time positions. You ask whether you could hold both positions under the Code. Your letter notes that because you work in the office of the _____ and cases involving municipalities are generally civil, the likelihood of conflicts with the City of _____ is low.

Canon 6 of the Code states explicitly that "a Clerk-Magistrate, other than an elected Clerk-Magistrate, shall refrain from political activity, and, in particular, shall not...

4) hold or seek an elective office, if there is a substantial likelihood that matters involving that office will come before the Clerk-Magistrate or the court in which the Clerk-Magistrate serves. An appointed Clerk-Magistrate may become a candidate for an elected Clerk-Magistrate position."

Unlike in the case of elected Clerk-Magistrates, Canon 6 directly applies to the political activities of appointed Assistant Clerk-Magistrates as outlined above. This applies to seeking and holding elective positions if there is a substantial likelihood that matters involving that office will come before the court in which the Clerk-Magistrate serves.

Canon 1 of the Code stresses that the purpose of the Code is "to contribute to preservation of public confidence in the integrity, impartiality, and independence of the courts." Canon 4 requires that Clerk-Magistrates "act in all times in a manner that promotes public confidence in the integrity and impartiality of the judicial branch of government."

The City of _____ is a municipality within the direct jurisdiction of the office of the _____ in the _____ Court. Most of the felony criminal matters originating in the City of _____ would be typically handled in your court. This would include, but not be limited to, grand jury proceedings and subsequent indictments, felony criminal trials, bail reviews from _____ Court, and youthful offender matters. It is very likely that _____ constituents will be appearing as police officers as well as witnesses, victims, and defendants during the above-mentioned proceedings.

As an elected official, it can be expected that constituents will frequently contact you regarding various issues, and it is likely that some of these constituents will have business before the _____ Court. Municipal decisions on personnel or funding, which you may participate in as city councilor or school committee member, can also be viewed as implicating your impartiality (Opinion 07-1). As an elected public official you would be sworn to represent, at all times, the public interests of the City of _____. Although the City Council or School Committee may be unlikely to come before the _____ Court Clerk's Office, it is clear that the City of _____ Police Department will maintain regular and substantial interest in the disposition of criminal matters in your court.

The Code's provisions requiring impartiality are necessary to preserve the public's confidence in the judicial system. As frequently noted in our opinions, to ensure the integrity of the judicial system, conduct must not only be beyond suspicion but must appear to be so. Mass Bar Assn. v. Cronin, 351 Mass 321, 326 (1966). The Committee has dealt with the situation of holding dual positions in three opinions. Opinion 94-13, Opinion 99-6, and Opinion 07-1, which we advise you to review. In Opinion 07-1, we found it would be likely that an elected Clerk-Magistrate, as a City Councilor, would be involved with lawyers or other persons who came before the _____ Court. As was the case in Opinion 07-1, it is also likely that the city Police Department will have regular and substantial criminal matters before your court. Much of what was said in Opinions 07-1, 99-6, and 94-13 is equally applicable to your situation.

Although we recognize your good intentions in wanting to serve the judicial system and your hometown, it is unlikely that you can wear both official hats and preserve the appearance of impartiality. As we have previously stated, "[t]he Canons are designed to operate prophylactically. The Rules do not await an actual impropriety nor do they depend upon recusal to solve conflicts where the situation is one which 'might reasonably create' them. A determination that they apply does not presume any lack of integrity by the Clerk" (Opinion 92-5).

In view of Canon 6 and other Canons mentioned herein, and the likelihood of at least the appearance of conflict and partiality that would arise if you were to hold either elective office in _____, we advise you against seeking or holding such positions while still actively serving as an appointed Assistant Clerk-Magistrate.