

**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

2009-2

January 27, 2009

Dear Assistant Clerk :

This is in response to your letter seeking the committee's opinion on the following. You are an \_\_\_\_\_ Assistant Clerk for \_\_\_\_\_. You are also an independent contractor for the \_\_\_\_\_ Sheriff's Office Civil Process Division. Your title in the Civil Process Division is deputy sheriff, and you believe you took an oath of office when you began that job. Your work as deputy sheriff involves serving of legal papers in civil matters. You do not perform arrests. You request that the committee provide you with an opinion that your work for the Sheriff's Office is not in conflict with your work as assistant clerk.

The committee has considered your request and it is our view that your job as deputy sheriff is in conflict with the provisions of the Code of Professional Responsibility for Clerks of the Courts. Those provisions require a clerk both to be and to appear to be impartial. More specifically, Canon 4, Impartiality and Disqualification, provides:

"A Clerk-Magistrate shall perform the duties of Clerk-Magistrate impartially and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judicial branch of government."

Similarly, Canon 5, Outside Activities, states that:

"A Clerk-Magistrate shall regulate outside and personal activities to minimize the risk of conflict with official duties..."

(C) Financial Activities. (1) A Clerk-Magistrate shall not conduct outside business activities in the courthouse at any time nor shall a Clerk-Magistrate conduct any outside business activities anywhere during normal court hours. A Clerk-Magistrate shall refrain from financial and business dealings that tend to reflect adversely on the Clerk-Magistrate's impartiality, interfere with the proper performance of the position of

Clerk-Magistrate, or involve the Clerk-Magistrate in transactions with lawyers or other persons likely to come before the court in which the Clerk-Magistrate is serving."

In Opinion No. 98-1 we responded to an inquiry from a clerk regarding an appointment as special sheriff in a county outside the jurisdiction of the court where the clerk served. We informed the clerk that the proposed appointment, even though outside the county in which he worked, would run afoul of the provisions of Canons 4 and 5, stating that "[y]our acting as special sheriff while you are the Clerk-Magistrate may serve to undermine public confidence in the impartiality of the judicial branch of government or interfere with the performance of your official duties as Clerk. In our view, such dual service is inconsistent with the Code...even though your appointment as special sheriff would be in a different county from the one where you serve as Clerk-Magistrate."

Opinion No. 2006-2 concerned a request from an assistant clerk of an appellate court regarding a proposed appointment to a position of reserve police officer. We informed the assistant clerk of our view that he may not accept the appointment, even though he did not work in a trial court. Our reasoning in that opinion also applies to your situation:

"The hallmark of an independent judiciary is its neutrality...The appearance of impartiality is as important as actual impartiality in promoting public trust and confidence in the courts of the Commonwealth. As the Committee has previously noted, to ensure the integrity of the judicial system, it 'must not only be beyond suspicion but must appear to be so.' *Mass. Bar. Assn. v. Cronin*, 351 Mass. 321, 326 (1966). In the view of the Committee, your working for a law enforcement agency while you are employed by the judicial branch could reasonably be perceived as compromising your impartiality, even if opportunities for actual conflicts may be negligible..."

It is our view that your serving process for the \_\_\_\_\_ County Sheriff's Office may create a relationship with litigants, witnesses and attorneys that may raise questions about your impartiality in the mind of a reasonable observer. When process that is officially issued by a clerk of court is served by a clerk who is wearing a different hat for the occasion, the independence of the judiciary could be questioned. Even though you do not work in the Trial Court, your work in the Civil Process Division can involve you with lawyers and other persons likely to come before the court, in violation of Canon 5C. These relationships and involvements could lead to a perception of lack of neutrality. The need for impartiality and the appearance of impartiality is as important in an appellate court as in a trial court. Accordingly, it is our view that you may not serve as deputy sheriff while serving as an assistant clerk.