

ISSUE

May a part time municipal court judge simultaneously serve as a sheriff's deputy for the county within which the municipality lies?

ANSWER

No.

FACTS

A municipal judge was recently elected to that part time position in a small community. The judge is a deputy for the sheriff's department of the county the judge's community is located in. As a deputy sheriff, the judge has trained and worked with the law enforcement officers of the municipality for which he is now the judge.

Sheriffs, their departments, and their deputies have authority and responsibility throughout their county. They are called upon to cooperate and work with the local law enforcement agencies within their county. (See Sec. 59.28 Wis. Stat.) A deputy sheriff would be expected to assist local law officers and be assisted by local law officers. The very nature of the duties place law enforcement officers in circumstances of risk, which in turn brings out high degrees of reliance, trust, and expectation. Contact between deputies and local officers would be expected and might be quite common during training, conferences, as well as day-to-day work activities.

When law enforcement officers determine that there should be prosecution of a matter, an initial choice is usually made by them as to whether to pursue a local ordinance violation, a county ordinance violation, or a criminal code violation. While the applicable prosecutor eventually determines how to proceed, the initial choice of the law enforcement officer has significance.

Local law enforcement officers are not the only authorities and prosecuting witnesses in municipal court matters, but they tend to be the primary ones.

DISCUSSION

The Committee concludes that the issue presented involves SCR 60.02; SCR 60.03(1)&(2); SCR 60.04(1)(e) &(4); SCR 60.05(1)(a)&(c). [It should be kept in mind that part-time municipal judges are exempted from certain provisions of SCR 60.05, but not those considered in this opinion. See SCR 60.07(2)]

A. SCR 60.02

SCR 60.02 is titled “A judge shall uphold the integrity and independence of the judiciary.” It is, in effect, a general exhortation regarding the importance of judges upholding judicial integrity and independence. While the comments thereto do not have the force of rule, we quote from them with approval.

Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of the judges. (emphasis added)

The real issue in this instance is whether public confidence and trust in the municipal court can be maintained where the municipal judge is a law enforcement officer with authority within the municipal court’s jurisdiction. There is a conflict and division between the judicial power embodied in a municipal judge and the executive power embodied in a deputy sheriff.

B. SCR 60.03(1) & (2)

SCR 60.03 A judge shall avoid impropriety and the appearance of impropriety in all of the judge’s activities.

(1) A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

(2) A judge may not allow family, social, political or other relationships to influence the judge’s judicial conduct or judgment...

Assessing whether a judge is actually influenced by relationships has traditionally been handled by the judge herself or himself. The appearance of impropriety can be assessed by others, though it is often a subjective exercise. Members of the public appearing before the municipal judge could be expected to know that the judge is a deputy sheriff. Given the general appearance of closeness among law enforcement officers, especially from overlapping jurisdictions, one would naturally be curious and concerned about the effect upon the court’s rulings. Most municipal court trials involve assessment of credibility between law enforcement testimony and the defendant’s testimony. In this court, the testifying officer may very well have provided life protecting backup to the judge or the judge’s fellow deputies, or at least worked with the judge and the judge’s fellow deputies, albeit on different cases. An appearance of impartiality cannot be maintained in the circumstances in question.

C. SCR 60.04(1)(e) & (4)

SCR 60.04 A judge shall perform the duties of judicial office impartially and diligently.

(1)(e) A judge shall perform judicial duties without bias or prejudice...

(4) Except as provided in sub. (6) for waiver, a judge shall recuse himself or herself in a proceeding when the facts and circumstances the judge knows or reasonably should know establish one of the following or when reasonable well-informed persons knowledgeable about judicial ethics standards and the justice system and aware of the facts an

circumstances the judge knows or reasonably should know would reasonably question the judge's ability to be impartial.

This provision directs self recusal to avoid bias or the reasonable outside perception of it. It is an inadequate remedy for the circumstances before the Committee. We perceive that recusal by the judge on all matters involving law enforcement, or local law enforcement, would 'put the judge out of business.' This Code provision is to ameliorate the impact of prohibiting relationships that might lead to bias or the perception of bias. It is for occasional conflicts, not as a complete substitute for SCR 60.03 or SCR 60.05.

D. SCR 60.05(1)(a)&(c)

SCR 60.05 A judge shall so conduct the judge's extra-judicial activities as to minimize the risk of conflict with judicial obligations.

(1) Extra-judicial Activities in General. A judge shall conduct all of the judge's extra-judicial activities so that they do none of the following:

- (a) Cast reasonable doubt on the judge's capacity to act impartially as a judge...**
- (c) Interfere with the proper performance of judicial duties.**

These provisions explicitly ban extra-judicial activities, like other employment, that casts impartiality into question and interferes with judicial duties. As discussed above, the judge's full time employment as a deputy in the county casts such reasonable doubt. It interferes with judicial duties by essentially making the judge unavailable to hear most cases.

Conclusion

The Committee concludes that a part-time municipal judge may not be employed as a deputy sheriff in the county of the municipal court's jurisdiction. Even if the municipal judge could set aside his or her law enforcement experiences, reasonable and informed members of the public would perceive bias, partiality, and unfairness. The availability of recusal is an inadequate solution because such a large portion of the municipal court's caseload involves law enforcement officers. In short, having the local police and the local judge be one and the same overshadows the integrity and independence required of the judiciary. (Caveat: In the rare instance where the part-time municipal judge is seldom called upon to hear any cases from law enforcement, the conclusion may be different.)

Applicability

This opinion is advisory only, is based on the specific facts and questions submitted by the petitioner to the Judicial Conduct Advisory Committee, and is limited to questions arising under the Supreme Court Rules, Chapter 60—Code of Judicial Conduct. This opinion is not binding upon the Wisconsin Judicial Commission or the Supreme Court in the exercise of their judicial discipline responsibilities. This opinion does not purport to address provisions of the Code of Ethics for Public Officials and Employees, subchapter III of Ch. 19 of the statutes.

I hereby certify that this is Formal Opinion No. 07-1 issued by the Judicial Conduct Advisory Committee for the State of Wisconsin this 18th of July, 2007.

/s/ George S. Curry

Hon. George S. Curry
Chair