



STATE OF VERMONT
JUDICIAL ETHICS COMMITTEE

Opinion No.: 27
Date: April 30, 2024
To: [name redacted in posted version pursuant to A.O. 35, ¶ 6]

The Committee has researched and reviewed the matter you presented to it. The following is the opinion of the Committee and a response to your inquiry pursuant to Administrative Order No. 35.

Questions Presented

May a Vermont assistant judge continue to serve as an auxiliary state police officer if the law enforcement duties are limited to boater and snowmobiler safety?

Short Answer

No.

Relevant Canons of Judicial Conduct

The relevant provisions of the Vermont Code of Judicial Conduct 2019 (“the Code” or “VCJC”) include the following rules and guidance:

- Preamble, ¶ 2: [Judges] should aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity, and competence.
- Canon 1, Rule 1.2: A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.
- Canon 2, Rule 2.1: The duties of judicial office, as prescribed by law, shall take precedence over all of a judge’s personal and extrajudicial activities.

- Canon 2, Rule 2.11(A): A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned. . . .
- Canon 3, Rule 3.1: A judge may engage in extrajudicial activities, except as prohibited by law or this Code. However, when engaging in extrajudicial activities, a judge shall not: (A) participate in activities that will interfere with the proper performance of the judge's judicial duties; (B) participate in activities that will lead to frequent disqualification of the judge; (C) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality;

Analysis

Although while serving as an assistant judge, judges may engage in other activities in the community, “[t]he duties of judicial office, as prescribed by law, shall take precedence over all of a judge’s personal and extrajudicial activities.” Rule 2.1. The Vermont Code of Judicial Conduct provides that judges “should aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity, and competence.” Preamble, ¶ 2. Crucially, “[a] judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.” Rule 1.2.

Of critical importance in ensuring public confidence in the impartiality of the judiciary is minimizing the risk of conflicts that result in disqualification. Rule 2.1, cmt. 1. “A judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned.” Rule 2.11(A). An auxiliary trooper is an employee of the Vermont State Police, so the question of impartiality would reasonably arise whenever any other employee of the Vermont State Police is involved in a matter, including abuse prevention matters, protection orders, or vehicle accident suits. The fact that the judge’s law enforcement role is limited to boater and snowmobile safety does not alleviate this concern.

The Rules prohibit a judge from participating in activities that interfere with the judge’s judicial duties, activities that will lead to frequent disqualification, and activities that “would appear to a reasonable person to undermine the judge’s independence, integrity, or impartiality.” Rule 3.1(A)–(C). Because Rule 3.1 prohibits a judge from participating in activities that will lead to frequent disqualification, as well as those that would undermine the judge’s impartiality, a judge’s employment as a law enforcement officer, even in a part-time limited role, would seem improper.

While under Vermont’s Code, assistant judges, as continuing part-time judges, are permitted to engage in other employment or accept appointments to governmental positions, they must still preserve the impartiality and integrity of the judiciary. In Opinion 2827-1, 1998 WL 35429308, at *1 (Jud. Eth. Comm. July 6, 1998), this Committee addressed the propriety of the appointment of an assistant judge to serve on the Vermont

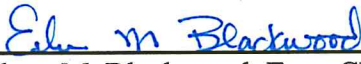
State Police Advisory Commission. The Committee noted that state troopers are routinely involved in relief from abuse proceedings, and therefore, that the judge would have to either resign from the commission or abstain from sitting on cases involving state troopers. *Id.*

The Committee also explained that such extrajudicial involvement with the State Police not only implicated the appearance of impartiality, but also raised questions about the separation of powers. *Id.* at *2. The Committee referred to a tradition of protecting the “appearance and reality” of judicial independence from the executive and legislative branches. *Id.* Arguably, this situation may raise greater concerns about the separation of powers, as the judge would be acting as a paid employee of both the judicial and executive branches at the same time. Because judges are members of the judicial branch, and law enforcement officers work in the executive branch, “any judge who attempts to serve both branches cannot accomplish the task without impairing the effectiveness of one or both positions.” Public Statement No. PS-2000-1 (Tex. State Comm. On Jud. Cond., March 24, 2000).


Judicial ethics committees in other jurisdictions generally agree that service in law enforcement, even in auxiliary roles, can threaten the public perception of judicial independence and create the appearance that a judge lacks impartiality. *See, e.g.,* Canon 2a Impartiality of Judiciary, Opinion 92-37, 1992 WL 12637132, at *1 (FL Jud. Eth. Adv. Comm. Oct. 14, 1992) (“The Committee believes that because of your activity as an auxiliary trooper, your impartiality in traffic court can reasonably be questioned.”). Even a purely auxiliary role or a seemingly remote role such as a police dispatcher can cast reasonable doubt on a judge’s impartiality. *See* NY Jud. Adv. Op. 08-194, 2008 WL 10613960 (N.Y. Adv. Comm. Jud. Eth. Dec. 23, 2008) (summarizing previous positions that town justice cannot accept work as a peace officer, police officer, or Special Deputy U.S. Marshal, and concluding that a part-time judge cannot provide security services to local municipalities); May A Judge Join the Fla. Highway Patrol Auxiliary (FHPA) and Serve In A Purely Administrative Capacity With the Auxiliary?, Opinion 2006-29, 2006 WL 6683680, at *2 (FL Jud. Eth. Adv. Comm. Dec. 1, 2006) (purely administrative work in auxiliary highway safety patrol could cast doubt on impartiality); Fundamental Incompatibility of Judicial Position and Law Enforcement Certification, Opinion 99-2, 1999 WL 667269, at *2 (Ariz. Sup. Ct. Jud. Eth. Adv. Comm. July 2, 1999) (justice of peace may not continue to certify as law enforcement officer or serve as a reserve deputy); Re: the Propriety of Part-time Municipal Judge Being Employed As A Dispatcher For the Police Department In Another City, Opinion 8-1993, 1993 WL 13710678, at *1 (SC Adv. Comm. Std. Jud. Cond. Nov. 30, 1993) (“[T]o avoid the appearance of impropriety and preserve the independence of the judiciary, [a part-time municipal] judge should not serve as a police dispatcher in another city”); *but see* Re: Judicial Advisory Opinion No. 07-02, 2007 WL 8083208, at *2 (NM Adv. Comm. Jud. Eth. Jan. 23, 2007) (opining that part-time probate judge does not violate judicial conduct rules by serving as chief of police since probate cases would rarely conflict with law enforcement).

Conclusion

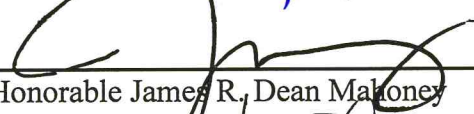
An assistant judge may not concurrently serve as a law enforcement officer, even in a limited role, as such service raises concerns about the judge's appearance of impartiality and independence, the possibility of frequent disqualification, and the proper separation of powers between the executive and judicial branches.



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