



STATE OF VERMONT
JUDICIAL ETHICS COMMITTEE

Opinion No.: 25
Date: July 11, 2023
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 be appointed to serve as a part-time municipal officer while continuing to serve as assistant judge?

Short Answer

Yes, assistant judges are not required to comply with the prohibitions on appointment to governmental positions or employment in a business entity.

Relevant Canons of Judicial Conduct

The Application section of the 2019 Vermont Code of Judicial Conduct (“the Code”) “establishes when the various Rules apply to a judge or judicial candidate.” According to the Definitions section of the Code, the term “continuing part-time judge” includes assistant judges.

The Application section provides:

(A) JUDGE. All judges shall comply with this Code except as provided below.

(B) CONTINUING PART-TIME JUDGE. A continuing part-time judge: (1) is not required to comply . . . (b) at any time with Rules 3.4 (Appointments to Governmental Positions) . . . and 3.11(B) (service as officer, director, or in other capacity in business entity) . . .

Rule 3.4 of the Code entitled Appointments to Governmental Positions provides

that “[a] judge shall not accept appointment to a governmental committee, board, commission, or other governmental position, unless it is one that concerns the law, the legal system, or the administration of justice.”

Rule 3.11(B) of the Code provides that

A judge shall not serve as an officer, director, manager, general partner, advisor, or employee of any business entity except that a judge may manage or participate in: (1) a business closely held by the judge or members of the judge’s family; or (2) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge’s family.

Analysis

The requester has asked if an assistant judge may be appointed by a town selectboard to serve as a part-time administrator of the town’s government for an interim period of three to four months.

Rule 3.4 of the Code would prohibit a judge from being appointed as a town administrator because the appointment does not concern the law, legal system, or administration of justice. The position of town administrator is also equivalent to serving as a manager of a private business entity, and Rule 3.11(B) of the Code would prohibit a judge from serving in such a role as well. The Code, however, recognizes that assistant judges have a part-time judicial function and therefore are explicitly exempt from the portions of the Code that prohibit other employment or service.

It is important to note that assistant judges who serve in other positions must comply with all other applicable provisions of the Code, even while performing their extrajudicial duties.


Members of the Judicial Ethics Committee



Eileen M. Blackwood, Esq., Chair




Honorable Thomas A. Zonay



Honorable James R. Dean Mahoney



Honorable Brian Valentine



Ian Carleton, Esq.