



**STATE OF VERMONT**  
**JUDICIAL ETHICS COMMITTEE**

Opinion No.: 34  
Date: February 25, 2025  
To: [name redacted in posted version pursuant to A.O. 35, ¶ 6]

The Committee has considered 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 judge serve as an emergency medical technician for a municipal volunteer fire department, where the members of the service receive a \$400 per year training stipend and are considered municipal employees?

May the judge be elected by the members of the department to serve as the EMS Head of Service who must present the department's budget request to the town selectboard and who receives an additional stipend of \$1000 for that service?

**Short Answer**

No,

**Relevant Provisions of Code of Judicial Conduct**

The relevant provisions of the Vermont Code of Judicial Conduct 2019 ("the Code" or "V.C.J.C.") include the following rules and scope:

- *Scope (5): The Rules of the Vermont Code of Judicial Conduct are rules of reason that should be applied ...with due regard for all relevant circumstances.*
- *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 3, Rule 3.2: A judge shall not appear voluntarily at a public hearing before, or otherwise consult with, an executive or a legislative body or official, except: (A) in connection with matters concerning the law, the legal system, or the administration of justice; (B) in connection with matters about which the judge acquired knowledge or expertise in the course of the judge's judicial duties; or (C) when the judge is self-represented in a matter involving the judge's legal or economic interests, or when the judge is acting in a fiduciary capacity.*
- *Canon 3, Rule 3.4: 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.*
- *Canon 3, Rule 3.7: (A) Subject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including but not limited to the following activities: (1) assisting such an organization or entity in planning related to fundraising, and participating in the management and investment of the organization's or entity's funds; (2) soliciting contributions for such an organization or entity, but only from members of the judge's family, or from judges over whom the judge does not exercise supervisory or appellate authority; (3) soliciting membership for such an organization or entity, even though the membership dues or fees generated may be used to support the objectives of the organization or entity, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice; (4) appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with an event of such an organization or entity, but if the event serves a fundraising purpose, the judge may participate only if the event concerns the law, the legal system, or the administration of justice; (5) making recommendations to such a public or private fund-granting organization or entity in connection with its programs and activities, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice; and (6) serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity: (a) will be engaged in proceedings that would ordinarily come before the judge; or (b) will frequently be engaged in adversary proceedings in the court of which the judge is a member, or in any court subject to the appellate jurisdiction of the court of which the judge is a member.*
- *Canon 3, Rule 3.11(B): A judge shall not serve as an officer, director, manager, general partner, advisor, or employee of any business entity [except in limited circumstances]....*

- *Canon 3, Rule 3.12: A judge may accept reasonable compensation or income for extrajudicial activities permitted by this Code or other law unless such acceptance would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.*

## **Analysis**

This Committee recently responded to a related question—whether a Vermont assistant judge could continue to work for and serve on the board of directors of a rescue squad while acting as an assistant judge. See Opinion 33. This Committee opined that because an assistant judge, defined as a continuing part-time judge under the Vermont Code of Judicial Conduct 2019 (“the Code” or “V.C.J.C.”), is not prohibited from serving as a director or employee of most businesses, the judge could likely continue to serve as both an employee and director of a rescue squad.

The current question involves several key differences: This question involves a full-time judge, not a continuing part-time judge. The rescue squad is a municipal department under 24 V.S.A. 1951, not a nonprofit organization, and its members are considered municipal employees. The members of the squad receive a \$400 per year training stipend. The judge also serves as the head of the service and presents the department's budget request. The judge receives a nominal stipend of \$1,000 per year for the head of service role.

Unlike a continuing part-time judge, a full-time judge in Vermont is not permitted to accept appointment to a governmental position, “unless it is one that concerns the law, the legal system, or the administration of justice.” V.C.J.C. Rule 3.4. The Committee believes the position of emergency medical technician with a town fire department is a governmental position that does not appear to concern the law, the legal system, or the administration of justice. Thus, a full-time judge may not serve in that position.

Additionally, Rule 3.2 prohibits a full-time judge from “appear[ing] voluntarily at a public hearing before, or otherwise consult[ing] with, an executive or a legislative body or official,” except in certain circumstances related to the law, the judge's duties, or the judge's personal interests. Appearing before the town selectboard to present the EMS department's budget would be a voluntary appearance before an executive/legislative body and would likely not meet any of the excepted circumstances. Thus, presentation of the annual budget would not be permitted.

In contrast to the limits on involvement in a municipal fire department, Rule 3.7 suggests that even a full-time judge may be able to serve as a volunteer with a non-governmental, charitable rescue service, as no governmental appointment would be involved. A New York ethics advisory committee concluded similarly—that a full-time judge could serve in a volunteer fire service that was a not-for-profit entity, as long as the position did not involve the judge in controversial matters in the county where the judge presides. NY Jud. Adv. Op. 21-124 (Sept. 9, 2021). Another opinion concluded that a

full-time judge could volunteer as a rescue diver for a county dive team as long as he was not considered a county employee and was not involved in considering issues of fact or policy. NY Jud. Adv. Op. 22-06 (Jan. 27, 2022).

A Massachusetts advisory opinion considering the case of a firefighter working for a municipal fire department concluded that while technically the service would be prohibited, the policy behind the code provision limiting appointment to governmental positions did not seem compelling. However, the preamble to the Massachusetts judicial code includes a statement providing that “[s]ome conduct that may literally violate a provision of this Code will be permissible because it does not violate the policy behind the prohibition or is de minimis.” MA Sup. Jud. Ct. Comm. Jud. Eth., Op. No. 2005-6, 2005 WL 6734494, at \*1 (Aug. 12, 2005). Based on that provision, the advisory committee concluded that “[t]he prohibition against holding extrajudicial government positions seems not to be intended to encompass membership in a low level, non-policymaking entity that is unlikely to involve the judge in matters that might come before him or her, that is designed to serve the community as a whole, and that is not something that would interfere with the judge’s proper performance of his or her judicial duties.” *Id.* The Massachusetts committee therefore concluded that the proposed firefighter position was comparable to serving as a volunteer for a nonprofit organization and thus would be permitted.

An ethics advisory committee in Arizona similarly concluded that a justice of peace could serve in a governmental volunteer fire department because the position was “more properly categorized as a permissible extra-curricular activity than a prohibited governmental position.” AZ Jud. Adv. Op. 03-04, 2003 WL 22696859, at \*2 (Oct. 15, 2003). That committee concluded that the preamble to its Code guides the application of the code “in the context of all relevant circumstances” and that the context leaned in favor of permitting the service. *Id.*

Vermont’s Code does not contain analogous language to the Massachusetts Code but does include guidance similar to Arizona’s that “the Rules of the Vermont Code of Judicial Conduct are rules of reason that should be applied ...with due regard for all relevant circumstances.” V.C.J.C. Scope (5). However, the Committee is concerned that this language relating to “rules of reason” is not sufficient to allow the Committee to ignore the plain language of the prohibition on appointment to a non-legal governmental position. Such a determination is an issue of policy for the Supreme Court.<sup>1</sup>

The answer to the second question in this request—appointment as the head of the service who would present and defend the budget to the selectboard and receipt of a stipend for that service—seems even clearer. In addition to the concern about appointment to a governmental position, appearing before a governmental board to present and seek approval for a budget for a municipal department is inconsistent with Rule 3.2.

---

<sup>1</sup> Although the issue of a stipend is irrelevant given the Committee’s conclusion, if the service were allowed, receiving a nominal stipend for that service would appear to be permitted under Rule 3.12, “unless such acceptance would appear to a reasonable person to undermine the judge’s independence, integrity, or impartiality.”

The Committee would also caution that every judge is required to comply with Rule 1.2, which require that the judge “act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary” and must ensure that the duties of the judicial office take precedence over the judge’s extra-judicial activities, a directive that might at times raise conflicts with emergency response duties.

A minority of the committee is concerned that given the nature and importance of the service provided by EMTs and fire personnel, and what appears to be a lack of any substantive distinction in how they serve their communities, there should be no difference between a municipal and non-profit fire department under Vermont’s Code. They further believe that the Court should consider amending the Code to take these concerns into account and allow judges to provide services as EMT’s and fire personnel, as is permitted in the other jurisdictions cited herein

**Conclusion**

It is the opinion of this Committee that a Vermont full-time judge may not serve as an EMT or the EMT head of service with a municipal fire/rescue department because such service would constitute appointment to a governmental position. The Committee also finds that the requirement that the head of service present a departmental budget to the selectboard would likely violate Rule 3.2 of the V.C.J.C.

*Eileen M. Blackwood*

Eileen M. Blackwood, Esq., Chair

Signed by:

*Thomas Zonay, Chief Superior Judge*

7F8D3A8BEE6410

Honorable Thomas A. Zonay

Signed by:

*James Mahoney*

4B493A7F698A4E55

Honorable James R. Dean Mahoney

Signed by:

*Ian Carleton*

01BBE8A7A07449

Ian Carleton, Esq.