

Informal Opinion 17-01

September 15, 2017

Question: A part-time justice court judge has asked whether the judge may serve as an administrative law judge for an entity such as the Workers Compensation Fund or the Labor Commission.

Answer: A part-time justice court judge may serve as an administrative law judge for the Workers Compensation Fund or the Labor Commission, provided there are no constitutional issues.

Discussion:

The Ethics Advisory Committee has issued two opinions that address the ethics of a part-time judge serving as an adjudicator in another capacity. In [Informal Opinion 97-1](#), the committee determined that an active senior judge may serve as a hearing officer for the Utah Board of Pardons and Parole. The committee first addressed the question of whether a judge may be employed by another branch of government. Rule 3.4 states that a judge may accept an appointment to a governmental position in another branch of government provided it is “one that concerns the law, the legal system, or the administration of justice.” The committee concluded that employment is permissible because an executive branch hearing officer is engaged in the administration of justice. The committee determined, however, that because the judge would be involved in the executive branch’s approach to criminal matters, the judge could not accept assignment of criminal or habeas corpus cases as an active senior judge. Dealing with the same types of cases in the two different roles created a conflict.

In [Informal Opinion 01-5](#), the committee resolved the question of whether a part-time justice court judge could serve as an administrative hearing officer in traffic matters. Consistent with [Informal Opinion 97-1](#), the Committee recognized that a part-time judge may not preside over the same type of cases in two different settings. As an administrative hearing officer, the judge would be resolving case types similar to those the judge would be presiding over as a part-time justice court judge. Although an administrative law judge would be hearing civil cases, they were similar to criminal cases. The local government could have enacted criminal ordinances governing the offending conduct, rather than civil ordinances. The dual roles created, at the very least, an appearance of conflict. Unlike the judge in [Informal Opinion 97-1](#), the part-time justice court judge did not have the option of refusing criminal case assignments. The dual employment therefore was not possible.

The main concern in both opinions was a judge presiding over similar case types in the two different settings. The concern does not exist in this situation. The position involves the administration of justice and is therefore permitted under rule 3.4.¹ Unlike the situations in the

¹ As noted in Informal Opinion 97-1, when a judge serves in the executive branch there is a potential constitutional issue. Even if service is permitted under 3.4, the judge must consider

two opinions, there would be little overlap between the types of cases in the two areas. The work would not involve criminal matters. Although there is a potential for the Workers Compensation Fund and Labor Commission cases to become civil litigation, it is very unlikely the litigation would be similar to cases that come before a justice court judge in small claims court. The committee therefore concludes that a part-time justice court judge may serve as a hearing officer for the Workers Compensation Fund or the Labor Commission.

If the judge has a small claims case that involves a Workers Compensation matter or a matter related to the Labor Commission, the judge must recuse from that case. If the judge finds that recusal becomes frequent, the judge must cease employment with the organization that creates the conflict. The judge may otherwise serve.

whether there is a violation of the Constitution when the judge serves key roles in two branches of government. Article V, Section 1 of the Constitution of Utah.