

**THE PROFESSIONAL ETHICS COMMITTEE  
FOR THE STATE BAR OF TEXAS  
Opinion No. 677**

**September 2018**

**QUESTION PRESENTED**

May the law partner of a part-time municipal court judge represent defendants in criminal cases pending before other judges in that municipal court?

**STATEMENT OF FACTS**

A lawyer whose law partner serves as a part-time municipal court judge represents criminal defendants in cases in the municipal court in which judges other than the lawyer's law partner serve as the presiding judges.

**DISCUSSION**

In Professional Ethics Opinion 541 (February 2002), this Committee addressed a similar question: "May a municipal court judge represent a person accused of a crime where (1) the judge/lawyer has not acted in the matter in his position as judge, and (2) where the police in that city are or may be potential witnesses in the trial of that case?" The opinion observed that "[t]he municipal court judge's dual role as judge and advocate would . . . pose a potential conflict of interest" under Rule 1.06(b)(2) of the Texas Disciplinary Rules of Professional Conduct. Subject to the provisions of Rule 1.06(c), Rule 1.06(b)(2) prohibits a lawyer from representing a person where the representation "reasonably appears to be or become adversely limited by the lawyer's or law firm's responsibilities to another client or to a third person or by the lawyer's or law firm's own interests."

Opinion 541 recognized a conflict between the lawyer's role as a municipal court judge and the lawyer's role as an advocate. As a judge, the lawyer must maintain impartiality. As an advocate, however, the lawyer would necessarily be adverse to police officers who would be expected to be witnesses in cases before him as judge.

The Committee concluded:

“A municipal court judge may not represent a criminal defendant (i) in any proceeding where he has passed upon the merits, (ii) in any matter where he has otherwise participated personally and substantially as an adjudicatory official, (iii) in any court on which the judge currently serves, or (iv) where the city’s police may be witnesses (or potential witnesses) in the trial of a case, unless the client and municipality give appropriate consent, after full disclosure, in accordance with Rules 1.06(c) and 1.11(a) of the Texas Disciplinary Rules of Professional Conduct. Rule 1.06(c)(1) imposes the additional obligation that the judge reasonably believe that the representation of each client/party not be materially affected, prior to undertaking such representation. This Committee expresses no opinion on whether such representation would be permissible under the Texas Code of Judicial Conduct.”

Rule 1.06(f) states: “If a lawyer would be prohibited by this Rule from engaging in particular conduct, no other lawyer while a member or associated with that lawyer’s firm may engage in that conduct.” Thus, the conclusion in Opinion 541 regarding the conduct of a part-time municipal court judge also applies to the conduct of the judge’s law partner.

Under the scenario considered in Opinion 541 and again here, the lawyer’s law partner has not acted in the matter as a judge. Rule 1.11(a)’s prohibition against a lawyer’s representing anyone in connection with a matter in which the lawyer previously served as an adjudicatory official is therefore not implicated. Nevertheless, the potential for conflict exists under Rule 1.06(b)(2) because of the competing interests of the lawyer’s law partner in his role as a judge and the lawyer’s role as an advocate. As a judge, the lawyer’s law partner must maintain neutrality toward witnesses, including police officers, and toward advocates, including prosecutors.

If the judge were also to serve as a criminal defendant’s lawyer, he would necessarily be adverse to police officers who would likely be witnesses in other cases before him as a judge. This would create a conflict under Rule 1.06(b) because his representation of the criminal defendant would reasonably appear to be adversely limited by his own interest in his role as a judge. Unless he reasonably believed that the representation of the criminal defendant would not be materially affected and obtained the consent of the criminal defendant in accordance with the provisions of Rule 1.06(c), he could not represent the criminal defendant. If he could not represent the criminal defendant, under Rule 1.06(f) his partner also could not represent the criminal defendant.

In addition, if the law partner is representing a criminal defendant, in his role as an advocate the judge’s law partner will necessarily be adverse to prosecutors and their witnesses. Knowing his partner’s role as a judge, such a lawyer may feel compelled to be

less vigorous in representing his client than he would be in the absence of such a relationship. Thus, the law partner may have his own conflict under Rule 1.06(b) in representing a criminal defendant because that representation reasonably appears to be adversely limited by the law partner's responsibilities to his partner, the judge, or to his law firm. Again, unless the law partner reasonably believed that the representation of the criminal defendant would not be materially affected and obtained the consent of the criminal defendant in accordance with the provisions of Rule 1.06(c), the law partner could not represent the criminal defendant.

The Committee notes that, under the facts assumed here, the only client involved is the defendant in the criminal case and not the municipality. The need for consent under Rule 1.06(c) is therefore a matter directed to the client defendant, not the municipality.

## **CONCLUSION**

Under the Texas Disciplinary Rules of Professional Conduct, the law partner of a part-time municipal court judge may not represent defendants in criminal cases pending before other judges in that municipal court unless the lawyer reasonably believes the representation of the criminal defendants will not be materially affected and, after full disclosure, the criminal defendant clients consent to the representation.