

ETHICS ADVISORY OPINION

09-06

UPON THE REQUEST OF A MEMBER OF THE SOUTH CAROLINA BAR, THE ETHICS ADVISORY COMMITTEE HAS RENDERED THIS OPINION ON THE ETHICAL PROPRIETY OF THE INQUIRER'S CONTEMPLATED CONDUCT. THIS COMMITTEE HAS NO DISCIPLINARY AUTHORITY. LAWYER DISCIPLINE IS ADMINISTERED SOLELY BY THE SOUTH CAROLINA SUPREME COURT THROUGH ITS COMMISSION ON LAWYER CONDUCT.

Factual Background:

Lawyer is a member of a law firm whose senior partner was recently elected mayor. The mayor sits *ex officio* on the city council. The city council appoints the judges of the city court. Lawyer often practices in city court.

Question Presented:

May Lawyer continue to practice in city court, or does his employment in the mayor's law firm raise a conflict of interest or appearance of impropriety barring Lawyer from practicing in any city court?

Summary:

The Rules of Professional Conduct do not prohibit Lawyer from practicing in city court. However, judges may be required to recuse themselves either if the mayor's partnership with counsel creates an appearance of impropriety.

Opinion:

The Rules of Professional Conduct do not prohibit Lawyer from practicing in city court. Rules 3.5(a) and 1.8(l) prohibit attempts to improperly influence a judge, and Rule 8.4(f) prohibits stating or implying an ability to influence a judge, but none of these rules prohibits ordinary advocacy under the facts presented. Likewise, the conflict-of-interest rules (1.7 through 1.11) contain no prohibition in this circumstance. Any lawyer's loyalty to a client may be

compromised by some interest of a partner or other member of that lawyer's firm, but the described scenario, without more, does not suggest any such compromise or risk of compromise.

Judges may be required to recuse themselves either if the mayor's partnership with counsel creates an appearance of impropriety (*see* Canon 2, Code of Judicial Conduct, 501 SCACR). Nevertheless, Lawyer is not prohibited from appearing before these city court judges unless the lawyer knows the judge is violating the Code of Judicial Conduct in hearing the case. See Rule 8.4(g)(a lawyer may not "knowingly assist a judge ... in conduct that is a violation of applicable rules of judicial conduct.")