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**E-85-1 Practice by associates of part-time municipal judge**

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**Questions**

If a member of a law firm has been elected to a part-time municipal judge position whose jurisdiction is limited to hearing municipal ordinance violation cases, (1) may members of his or her firm represent clients in matters involving the town where the municipal judge is employed, and (2) may members of the firm appear in the municipal court of the town where the part-time municipal judge is employed?

**Opinion**

1. Members of the municipal judge's firm may ethically represent clients in matters involving the town where he or she is employed. In order to make this determination, it is necessary to determine whether the municipal judge can ethically represent such clients. If he or she may handle a representation, then other members of the firm may. On the other hand, if the part-time municipal judge cannot ethically represent a client, then other members of the firm are barred from representation by principles of vicarious or imputed disqualification. Wisconsin Supreme Court Rule 20.28(4); *see also* ABA Model Rule of Professional Conduct 1.10.

A lawyer who is a public officer, such as a part-time municipal judge, should not engage in activities in which his or her personal or professional interests are or foreseeably may be in conflict with his or her official duties. SCR 20.45(8). Representing clients in matters involving the town where he or she is employed generally does not conflict with the municipal judge's official duties, and such representation by the judge would not be improper. Accordingly, members of the municipal judge's firm may ethically represent clients in matters involving the town where he or she is employed. However, the entire firm is barred from representation in any matter which if handled by the judge would conflict with his or her official duties.

2. The same analysis as above applies in determining whether members of the judge's firm may appear in the municipal court where he or she is employed.

If the judge may appear in that court, then his or her associates may; otherwise, his or her associates are barred from appearing in that court by principles of vicarious or imputed disqualification. SCR 20.28(4).

A part-time judge who practices law is in a position of great delicacy and must be scrupulously careful to avoid conduct in his or her practice whereby he or she utilizes or seems to utilize his or her judicial position to further his or her professional success. ABA Formal Opinion 142 (May 1935) (citing former Canon 31 of the ABA Code of Judicial Ethics). Accordingly, a part-time judge should not practice in the court in which he or she is a judge, even when presided over by another judge, or appear therein for himself or herself in any controversy. *Id.* Applying the principles of SCR 20.28(4), members of the municipal judge's firm are also barred from appearing in the municipal court where the judge serves.