

ADVISORY COMMITTEE
ON STANDARDS OF JUDICIAL CONDUCT

OPINION NO. 9 - 2020

RE: Propriety of a Magistrate Court Judge employing a Berkeley County Detention Officer as constable to serve court papers on a part-time basis.

FACTS

A Magistrate Court Judge would like to hire an officer for a Berkeley County detention center as a constable to serve court papers for magistrate court civil cases. The detention officer would have no courtroom duties or office hours. The detention officer would not be required to appear or testify before any magistrate judges and does not participate in any bond court proceedings held at the detention center. The judge inquires as to whether hiring the officer is proper.

CONCLUSION

A Magistrate Court Judge may hire a Berkeley County detention officer as a constable to serve papers for magistrate court civil cases.

OPINION

In Opinion No. 14-2000, we considered the issue of whether a constable for the magistrate court could also be employed as a lake warden commissioned by the county sheriff. We noted that Article VI § 3 of the South Carolina Constitution states that "[n]o person may hold two offices of honor or profit at the same time. This limitation does not apply to officers in the militia, notaries public, members of lawfully and regularly organized fire departments, constables, or delegates to a constitutional convention." 1989 Act No. 9, § 2, eff February 8, 1989. Because constables are excluded from the dual office prohibition, there was no bar against acting as a constable and as a lake warden for the sheriff.

In Op. No. 14-2000, we also noted that “A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.” Rule 501, Canon 2, SCACR. However, we determined that the lake warden’s duties were separate from those of a constable and concluded that service as both would not create any impropriety or the appearance of impropriety.

The issue here is similar: can a constable also be a detention officer employed by the county sheriff? We believe the conclusion of Op. 14-2000 applies. We note that the constable’s duties would be limited to service of process for civil cases and requires no courtroom presence. The detention officer’s duties, as provided in the job description, include maintaining administrative and inmate records; processing information on incoming inmates; interviewing incoming inmates as to pre-existing health conditions, supervising the release of transfer of inmates, etc. However, the detention officer has no involvement with any bond court proceedings at the detention center. We see no overlap or conflict in the job duties and therefore no impropriety or appearance of impropriety is created by the hiring of the detention office as a constable. Thus, the Magistrate Court Judge’s employment of a detention officer as a constable is permissible under the Code of Judicial Conduct. However, in appointing the detention officer, the judge is cautioned to ensure there is compliance with S.C. Code § 22-9-10 et seq. governing constables.¹

¹ The Committee did not analyze this request under those code sections and only determined the propriety of the matter under the Code of Judicial Conduct.

s/ Letitia H. Verdin
LETITIA H. VERDIN, CHAIR

s/ Usha Jeffries Bridges
USHA JEFFRIES BRIDGES

s/ Keith M. Babcock
KEITH M. BABCOCK

July 22, 2020