

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 88-03
(May 11, 1988)

**Limitation on Judicial Officers Holding
Other Public Positions**

Issues

1. May a town coordinator, the equivalent of a town manager, appropriately serve as town magistrate?

Answer: No.

2. May a town mayor appropriately serve as part-time town magistrate?

Answer: No.

Discussion

We deem it appropriate to consolidate our discussion of the questions inasmuch as reasoning common to both, to a great extent, applies. In each case, we find conflicts of interest between the judicial office and the extrajudicial office. It is apparent that impartiality of the judicial office is brought into question, for example, where jail commitments or fines may be imposed. This very important dispositional task requires full, fair, and careful attention to the circumstances of the defendant and the violation, and a judicially sensitive decision with equity and justice the only goal. That goal, and the administration of justice, must remain untainted by concerns that the judge holds another office charged with the administrative responsibility for budgets and finances for the governmental unit.

Canon 1 requires that the judge uphold the integrity and independence of the judiciary. Canon 2 requires the judge to avoid both impropriety and the appearance of impropriety in all activities. The starting line for due process of law requires nothing less than a fair judge. "To protect against unchecked power, it is necessary not only to have separate branches of government but also to have separate personnel in each branch." *Matter of Walker*, 153 Ariz. 307, 310, 736 P. 2d 790, 793 (1987).

The administration of justice must remain untarnished, and this is not possible if the judicial office is fettered by concerns, apparent or real, that the judge holds another office charged with fiscal responsibilities for the governmental unit. Those responsibilities implicitly embrace fund-raising and fund-saving questions and the general economics of the body politic and may conflict with the role of a neutral and detached magistrate. Accordingly, a judicial officer should not hold both positions.

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Applicable Code Sections

Arizona Code of Judicial Conduct, Canons 1 and 2 (1985).

Other References

Matter of Walker, 153 Ariz. 307, 736 P.2d 790 (1987).