THE PROFESSIONAL ETHICS COMMITTEE
FOR THE STATE BAR OF TEXAS
Opinion No. 540
February 2002

QUESTION PRESENTED

Is it a violation of the Texas Disciplinary Rules of Professional Conduct for a lawyer who is a county judge to represent private clients in the justice of the peace, statutory county courts, and district courts of the county in which he serves as county judge?

STATEMENT OF FACTS

An elected county judge who is a licensed lawyer desires to practice law in the same county in which he serves as county judge by representing civil and criminal defendants in the justice of the peace court, the statutory county court at law, and district courts. The county judge is the presiding officer of the commissioner's court that sets the salary of the justice of the peace and county court-at-law judges. The county judge is the chief budget officer of the county and, in such capacity, he has an influence over the compensation of the personnel of all the courts in such county, as well as the personnel in the district attorney's office.

DISCUSSION

The constitutional and statutory legal issues pertaining to whether a county judge may practice law in the courts of his county have been addressed in a Texas Attorney General's opinion. Attorney General Opinion No. JC-0033 (April 14, 1999), states in part:

Section 82.064(b) of the Government Code does preclude a county judge from appearing as an attorney in certain courts within his county. That section provides:

> A county judge or county clerk who is licensed to practice law may not appear and practice as an attorney at law in any county or justice court except in cases over which the court in which the judge or clerk serves has neither original nor appellate jurisdiction.

Under this provision, a county judge may not practice law in his own court or in lower courts over which his or her court has appellate jurisdiction. A county judge may, however, participate in the prosecution of a criminal defendant in district court. *Clarich v. State, 129 S.W. 2d 291 (Tex. Crim. App. 1939); Shoope v. State, 38 S.W. 2d 793 (Tex. Crim. App. 1930).* Accordingly, a county judge is permitted in certain circumstances to practice law in the courts within the county despite his position as chief budget officer. The county court of Cameron County has the jurisdiction of a probate court but has no other civil or criminal jurisdiction. *TEX. GOV'T CODE ANN. § 26.131* (Vernon 1988). *Section 82.064 of the Government Code* thus bars the county judge of this particular county from appearing in probate matters in any court in Cameron County.

The substance of section 82.064 has been incorporated into the Code of Judicial Conduct. Canon 4G of this code provides that "[a] judge shall not practice law except as permitted by statute or this Code. A county judge who performs judicial functions and who is an attorney is exempt from Canon 4G, 'except [when] practicing law in the court on which he or she serves or in any court subject to the appellate jurisdiction of the county court, or acting as a lawyer in a proceeding in which he or she has served as a judge or in any proceeding related thereto." TEX. CODE JUD. CONDUCT, Canon 6B.(3), *reprinted in* TEX. GOV'T CODE ANN., tit. 2, subtit. C app. B (Vernon 1998); *see 18 BAYLOR L. REV. 278, 280 (1966)* Comm. on Interpretation of the Canons of Ethics, State Bar of Tex., Op. 183 (1958). These provisions permit a county judge to practice law in a court within the same county in certain

circumstances, even though he is chief budget officer.

Subsequently, the Attorney General was asked whether it is ethical for the county judge to practice before the justice of the peace court or the county court-at-law, in view of the fact that the commissioner's court sets the salaries of the judges of those courts. *See* Request for Attorney General Opinion No. RQ-0141-JC. In responding to that question on March 14, 2000, the Attorney General's office stated, in part, that:

> We cannot determine in an attorney general opinion as a matter of law whether or not a county judge or county commissioner may ethically practice before the justice of the peace court or the county court-at law. The decision as to whether particular conduct by an attorney violates a provision of the Rules of Professional Conduct lies within the province of the State Bar of Texas. Moreover, such a determination requires the investigation and resolution of fact questions, which is beyond the scope of an Attorney General Opinion. Tex. Att'y Gen. Op. No. JC-0033 (1999) at 5; Tex. Att'y Gen. LO-94-005 at 2.
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> Additionally, you may wish to contact the Professional Ethics Committee, which "shall, either on its own initiative or when requested to do so by a member of the state bar, express its opinion on the propriety of professional conduct other than on a question pending before a court of this state." *TEX. GOV'T CODE ANN. § 81.091*.

This committee recently addressed the issue of whether a lawyer who was also an elected county commissioner had a conflict of interest if he represented private criminal clients in the justice, statutory county and district courts in that county. In Opinion 530, October 1999, the committee determined that such representation by a lawyer who is a county commissioner would violate Rule 1.06(b)(2), which provides:

> (b) ... except to the extent permitted by paragraph (c), a lawyer shall not represent a person if the representation of that person:
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> ...
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> (2) 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.

The conflict of interest was deemed to exist because the county commissioner's court has perceived or actual influence over the various courts through fiscal authority and the approval of personnel appointments. Moreover, the budgetary authority of the county commissioners extended to the salaries of the criminal district attorney and all other personnel in that office. Under Rule 1.06(f), the conflict of interest extended to all lawyers associated with the private law firm in which the county commissioner practiced. Accordingly, neither the county commissioner nor the lawyers associated in a law firm with such commissioner could accept or continue such a representation in the absence of effective consent pursuant to Rule 1.06(c).

This committee also addressed similar issues and reached the same conclusion in Opinion 497, August 1994. In that situation, an elected city commissioner was deemed to have a conflict of interest if he represented private criminal clients in the county and district courts in the county where he served as a city commissioner.

For the same reasons expressed in Opinions 530 and 497, the committee believes that a lawyer who serves as a county judge and is the presiding officer of the county commissioner's court and the chief budgetary officer of the county has a conflict of interest in representing private clients in the justice of the peace, statutory county, and district courts of the county in which he serves as county judge. The conflict exists because the lawyer is adversely limited in his representation as a result of his responsibilities to the county, his responsibilities to the private client, and by his personal interests as both a lawyer and public official. Neither the county judge nor any lawyers associated with him or her

can accept or continue such representation unless the conditions of Rule 1.06(c) are met. Rule 1.06 (c) allows such representation if:

> (1) the lawyer reasonably believes the representation of each client will not be materially affected; and
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> (2) each affected or potentially affected client consents to such representation after full disclosure of the existence, nature, implications, and possible adverse consequences of the common representation and the advantages involved, if any.

Assuming that Rule 1.06(c)(1) can be satisfied, the lawyer must then obtain the consent of the private client and the county following full disclosure of the existence, implications, and possible adverse consequences of the conflict of interest. Consistent with Opinion 497, the consent of the county is required because of the lawyer/county judge's obligations as a public official of the county. The committee expresses no opinion on whether the county can consent to such conflict of interest since the issue of consent by a governmental entity involves questions of law beyond the jurisdiction of this committee.

CONCLUSION

It is a conflict of interest under Rule 1.06(b)(2) for a lawyer who is a county judge to represent a private client in any justice of the peace, statutory county courts, and district courts in that county. Under Rule 1.06(f) this conflict of interest also extends to all lawyers associated with the private law firm in which the county judge practices. The county judge and lawyers associated with his law firm can accept or continue such representation only upon compliance with the requirements of Rule 1.06(c), which includes the consent of the private client and the county to the representation after full disclosure of the existence, nature, implications, and possible adverse consequences of the conflict of interest.