

February 27, 2008

Laurie A. Bridewell, Esquire  
Bridewell & Bridewell Attorneys  
Post Office Box 391  
Lake Village, Arkansas 71653

Re: Advisory Opinion No. 2008-01

Dear Ms. Bridewell:

In your request for an opinion you stated that you practice in a partnership with your husband, Robert Bridewell, who practices criminal law in Chicot County and “quite actively” in Circuit Court throughout the Tenth Judicial District. You also stated that you are the elected City Attorney for Lake Village in Chicot County “advising the municipality strictly on civil matters.” You stated that there are three District Court positions in Chicot County: Eudora, Lake Village and Dermott and that you intend to file your petition to run for the elective office for judge of the District Court of Eudora.

We will first address your second question asking if you “...can continue to serve as city attorney for the City of Lake Village and also as a district judge in another city.” We find nothing in the Code that addresses this issue directly, and therefore we cannot opine that the Code prohibits your holding both offices. We would invite your attention to our Opinion 99-02 where under different factual circumstances we stated that we cannot prohibit the holding of both positions but that we did consider it to be unwise and imprudent. While your situation is an even closer call than that of 99-02 we have similar reactions. If you choose to hold the office of District Judge you must be particularly diligent in always complying with the entire Code and specifically with Canon 1 dealing with upholding the integrity and independence of the office and Canon 2 dealing with the avoidance of impropriety and the appearance of impropriety in all your activities.

In our opinion No. 2004-07 we emphasized that assuming the office of a continuing part-time judge places a great burden on the holder of that office and this requires a great deal of diligence and sensitivity to the issues covered by the Code. An individual who accepts the position of a continuing part-time judge places the judicial office first in service and priority and certain restrictions must follow. See our Opinion No. 98-02.

Canon 5, entitled, “A judge or Judicial Candidate shall Refrain from Inappropriate Political Activity” contains the following provision in Section A (2):

“(2) A judge shall resign from judicial office upon becoming a candidate for a non-judicial office either in a primary or in a general election, except that the judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention if the judge is otherwise permitted by law to do so.”

The exceptions for a Continuing Part-time Judge under Application of the Code of Judicial Conduct section B does not cover the provision of the Code quoted above. This poses a curious problem for you. While the Code does not have any specific provision prohibiting your holding the office of City Attorney of one city and District Judge of another city it does require that you resign from your judicial office to run for your elective office of City Attorney. This would mean that the next time you run for City Attorney of Lake Village you should resign your position as District Judge of Eudora. We will not speculate on this issue, but does this mean that the drafters of the Code never even envisioned any judge holding another elective office?

We cannot address your first inquiry concerning the “ramifications of criminal law generated fees” in general. We address only specific prospective questions with regard to judicial conduct. Should you choose to run for and are subsequently elected to judicial office you will have to deal with these issues as they arise. We suggest that you and your partner carefully read Advisory Opinion 2003–02 of the Professional Ethics Committee of the Arkansas Bar Association which reaches several conclusions, including the fact that your law partner cannot practice criminal matters in the same county; and fees cannot be shared with the law partner judge.

Very truly yours,

Edwin B. Alderson