

Wearing Many Hats:

Conflicts of Interest and Dual-Office Holding



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Objectives

- Participants will be able to:
 - Define Dual Office Holding, Conflict of Interest and Appearance of Impropriety
 - Identify three conflicts of interest from given hypotheticals
 - Analyze a hypothetical scenario for appearances of impropriety

Conflict of Interest vs. Dual-Office Holding

- Conflict of Interest: A clash between a judge's professional obligations and the personal interests of the judge or other person
- Dual-Office Holding: a public servant holding two or more public offices of emolument (paid) at the same time

Conflict of Interest vs. Dual-Office Holding

■ Dual-Office Holding: What is “Officer”

- A public officer – unlike a public employee – exercises a sovereign function of government largely independent of the control of others for the public benefit
- Does not have to be elected to be Public Office Holder – City Manager, City Secretary, etc.

Judicial Canons



■ Canon 4(D)(1): Judge shall refrain from financial and business dealings that tend to:

- reflect adversely on judge’s impartiality
- interfere with proper performance of duty
- exploit his judicial position
- involve judge in frequent transactions with those that appear before the bench

Judicial Canons



■ *Canon 4(E)(1): Judge shall not serve as:

- executor
- administrator
- trustee
- guardian
- attorney in fact/fiduciary

Unless family and then ONLY if does not interfere

With other judicial duties **BUT**

Judicial Canons



*Pursuant to Canon 6C(1)(b):

Compliance with Canon 4(E) is not required of Municipal Court Judges or Justices of the Peace

Legal vs. Ethical

■ Note that there are times where an act taken by a judicial officer may be legal, yet still unethical

- SCJC Public Statement PS-2000-1
 - Judges acting as peace officers – AG says not DOH
 - SCJC says unethical because separation of powers and
 - Appearance of Impropriety – Public Distrust

Dual-Office Holdings



According to AG opinions:

- | | |
|---------------------------------|---------------|
| ■ MJ and Board/River Authority? | ■ Yes |
| ■ MJ and Police Officer? | ■ No, but Yes |
| ■ MJ and MJ in different City? | ■ No |
| ■ Part-time MJ and JP? | ■ No |
| ■ MJ and DA Polygraph Examiner? | ■ Unclear |

Why?

- Neither violates DOH

- Conflict of Interest:

- Both LEO and Poly. Examiner are Executive
- Also, LEO carries Judge's Commission?
- So, Traffic Defendant feels fair?



Even Tenuous Conflict can be Appearance of Impropriety

- Overall goal of the Texas Justice System is to preserve the integrity and independence of the judiciary.
- Thus, if the public sees actions by a judge that appear to be improper, even if legal, it can bring public discredit

Appearance of Impropriety

- Aol is enough to warrant recusal in some situations
- Tex. R. Civ. P. 18b generally requires recusal with financial or fiduciary ties to case, but:
 - (b)(1): The Judge's impartiality might reasonably be questioned.

Texas Constitution, Art. V §1(a)(6)A

- Any judge may be removed from office for willful or persistent violation of rules, incompetence, willful violation of the Code of Judicial Conduct or ***willfull or persistent conduct that is clearly inconsistent with the proper performance or duties or casts public discredit upon the judiciary or the administration of justice.***

Hypothetical One

- A municipal judge was previously a reserve deputy for a law enforcement agency that also carries his commission. However, the judge now (under a new TCOLE statute) carries his own commission.
 - Could this be Dual-Office Holding?
 - Could this be a Conflict of Interest?
 - Could this be an Appearance of Impropriety?

Hypothetical Two

- A municipal judge is also sitting on the community's local school board. The school board position is unpaid.
 - Could this be Dual-Office Holding?
 - Could this be a Conflict of Interest?
 - Could this be an Appearance of Impropriety?

Hypothetical Three

- A municipal judge is also the sitting city secretary.
 - Could this be Dual-Office Holding?
 - Could this be a Conflict of Interest?
 - Could this be an Appearance of Impropriety?

Hypothetical Four

- A part-time municipal judge also works as a defense attorney. She has occasionally represented a defendant she had unknowingly magistrates, as she magistrates hundreds of defendants a year.
 - Could this be Dual-Office Holding?
 - Could this be a Conflict of Interest?
 - Could this be an Appearance of Impropriety?
