

THE PHILADELPHIA BAR ASSOCIATION
PROFESSIONAL GUIDANCE COMMITTEE
Opinion 2012-2
(October 2012)

The inquirer, a licensed Pennsylvania attorney, has recently been elected Register of Wills in a County of Pennsylvania ("X County"). The inquirer is also associated with a law firm (the "Law Firm") that practices within the Commonwealth of Pennsylvania, including X County.

The inquirer states that to avoid the appearance of impropriety, the inquirer has already decided not to serve as counsel to any estates being administered in X County. Also, the inquirer has decided to recuse him/herself should another attorney at the Law Firm appear before the Register as a finder of fact in a disputed probate matter.

Having reviewed the Pennsylvania Rules of Professional Conduct, specifically Rule 1.11, the inquirer believes that: (a) since the Register of Wills office involves mostly duties as a non-attorney, there will not be an imputed conflict of interest to the Law Firm, and (b) as Register and Clerk, the inquirer will not be privy to confidential attorney-client communications, and most filed documents will be public, unless they are ordered sealed by the courts.

The inquirer now asks the following questions:

1. May I serve as an executor or administrator of an estate being administered in X County, if I recuse myself from any of the duties of the Register of Wills and Clerk of the Orphans' Court?
2. Is there a conflict of interest for any other lawyer within the Law Firm to represent estates being administered in X County?

Let us first address the inquirer's belief that the Register of Wills office involves mostly duties as a non-attorney. Rule 1.11 of the Pennsylvania Rules of Professional Conduct (the "Rules"), *Special Conflicts of Interest for Former and Current Government Officers and Employees*, provides in part that,

- d) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee:
 - 1) is subject to Rules 1.7 (*Conflict of Interest: Current Clients*) and 1.9 (*Duties to Former Clients*); and
 - 2) shall not:
 - (i) participate in a matter in which the lawyer participated personally and substantially while in private practice or

nongovernmental employment, unless the appropriate government agency gives its informed consent...

Applying the above Rule, since the inquirer is both a licensed Pennsylvania attorney and the Register of Wills in X County, the inquirer is a lawyer currently serving as a public officer or employee and is subject to Rule 1.11. Rule 1.11 does not contemplate whether the specific duties of the public officer or employee are categorized as attorney/non-attorney. As comment 1 to Rule 1.11 puts it quite succinctly, “[a] lawyer who has served or is currently serving as a public officer or employee is personally subject to the Rules of Professional Conduct...”

Further, The Rules and Practice Committee of the Probate and Trust Law Section of the Philadelphia Bar Association defines the Office of the Register of Wills as a “quasi-judicial one, created by statute.”ⁱ Finally, in Opinion 2011-4, this Committee opined that the definition of “Tribunal” in Rule 1.0(e) includes:

“...the Register of Wills when he or she acts to grant letters of administration under the Probate, Estates and Fiduciary Code 20 Pa. C.S.A. on the application of a person seeking such letters is a ‘tribunal’ under this definition. (See also, Phila. Bar Assn. Professional Guidance Committee Opinion 92-17, Pennsylvania and Pennsylvania Bar Assn Opinion 92-69.)”

Therefore, it is the Committee’s belief that as Register and Clerk, the inquirer is an attorney participating in judicial proceedings. That the inquirer will not be privy to confidential attorney-client communications and most filed documents will be public, unless they are ordered sealed by the courts, does not alter our determination.

Next we turn to the inquirer’s first question: may the inquirer serve as an executor or administrator of an estate being administered in X County, if the inquirer recuses herself or himself from any of the duties of the Register of Wills and Clerk of the Orphans’ Court. The Committee would like to make clear that this question must be determined by the President Judge of the relevant Judicial District of Pennsylvania. The Supreme Court of Pennsylvania has exclusive jurisdiction over judicial officers and judicial employees.ⁱⁱ The County Register of Wills office is under the direct authority of the Courts of Common Pleas of Pennsylvania and all employees are considered employees of the Unified Judicial System of Pennsylvania (UJS).ⁱⁱⁱ As an employee of UJS, the Register of Wills must comply with the Code of Conduct For Employees of the Unified Judicial System of Pennsylvania (the “Code of Conduct”).^{iv}

The Code of Conduct provides in part that:

IV. CONFLICTS OF INTEREST AND RELATED PROHIBITIONS

C. Special Treatment and/or Special Favors. Employees of the Unified Judicial System shall not permit family, social, or other relationships to influence their official conduct or judgment, or to create the appearance of influencing their official conduct. Employees shall inform their supervisor of any situation creating undue influence or the appearance of undue influence.

F. Personal and Financial Interests. Employees of the Unified Judicial System shall not participate in any court- or work-related matter wherein they have more than a minimal personal or financial interest.

G. Duty to Disclose. If a conflict of interest should arise, the employee shall immediately advise his or her supervisor. If the supervisor determines that a conflict of interest exists, then the employee shall abide by any employment restrictions that are deemed to be necessary.

VI. PERSONAL RELATIONSHIPS AND ACTIVITIES

E. Employees of the Unified Judicial System shall not engage in financial or business dealings or in any other personal activities that may detract from the impartiality of the judiciary, may otherwise interfere with the performance of their official duties, or may exploit the employee's official position.

F. Employees of the Unified Judicial System may engage in outside employment or commercial activity that does not interfere or conflict with their official duties. Outside employment or commercial activities must be reported in writing in advance to the employee's supervisor. Business transactions that are strictly personal, minor or incidental need not be reported.

Before engaging in any outside employment that involves the practice of law, the legal system or the administration of justice, the employee shall first consult with his or her supervisor to determine whether the proposed position is consistent with the standards in this Code.

Note: Pennsylvania Rule of Appellate Procedure 3121 prohibits specified appellate court staff from practicing law in their respective appellate court and requires prior approval for the practice of law.

Therefore, per the Code of Conduct, the inquirer must consult with his or her supervisor to determine whether serving as an executor or administrator of an estate being administered in X County, while being the Register of Wills and Clerk of the Orphans' Court in X County, is permissible.

Finally, we turn to the inquirer's last question: is there a conflict of interest for any other lawyer within the Law Firm to represent estates being administered in X County? Again, the Committee finds that this question must be determined by the President Judge of the relevant Judicial District of Pennsylvania. Whether the conflicts of a lawyer who is both associated with a specific law firm and currently serving as an officer or employee of the government are imputed to the lawyer's law firm is governed by Rule 1.11. As Rule 1.11(b) states:

- (b) When a lawyer is disqualified from representation under paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:
- 1) the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom; and
 - 2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule.**

Therefore, in order for attorneys from the Inquirer's firm to practice before the Register of Wills, the Inquirer must obtain approval from the President of Judges and comply with Rule 1.11(b).

CAVEAT: The foregoing opinion is advisory only and is based upon the facts set forth above. The opinion is not binding upon the Disciplinary Board of the Supreme Court of Pennsylvania or any other Court. It carries only such weight as an appropriate reviewing authority may choose to give it.

ⁱ The Rules and Practice Committee of the Probate and Trust Law Section of the Philadelphia Bar Association published the "Register of Wills of Philadelphia County Manual" in cooperation with the Philadelphia Office of the Register of Wills. See, <http://www.peph.com/>

ⁱⁱ See, *L.J.S. v. State Ethics Commission*, 744 A.2d 798 (Pa. Cmwlth. 2000); Billotte, Opinion 00-005.

ⁱⁱⁱ See, Code of Conduct Section II, SCOPE. See <http://www.pacourts.us/Links/Judiciary/> or direct link <http://www.pacourts.us/NR/rdonlyres/46E8F52C-B12B-4906-9F20-2455F79399F5/0/UJSCodeofConduct.pdf>

^{iv} See, Code of Conduct Section I, INTRODUCTION. See <http://www.pacourts.us/Links/Judiciary/> or direct link <http://www.pacourts.us/NR/rdonlyres/46E8F52C-B12B-4906-9F20-2455F79399F5/0/UJSCodeofConduct.pdf>