

1978 WL 34934 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 8, 1978

*1 Mr. Neal Forney
Assistant Director
South Carolina Court Administration
P. O. Box 11788
Columbia, S. C. 29211

Dear Mr. Forney:

You have asked whether a city recorder may appear as counsel for a defendant charged in magistrate's court in the same county in which the recorder serves.

A city recorder serves as a part-time judicial officer and as such he must comply with Supreme Court Rule 33. (Code of Judicial Conduct). Rule 33 states that a part-time judge is not required to comply with Canon 5C (2), D, E, F and G and Canon 6 C. Thus, a city recorder is permitted to practice law since he serves as only a part-time judge. The Code of Judicial Conduct further provides that a part-time judge 'should not practice law in the court on which he serves or in any court subject to the appellate jurisdiction of the court on which he serves, or act as a lawyer in a proceeding in which he has served as a judge or in any other proceeding related thereto.' It appears, therefore, that a city recorder is not prohibited by this language from serving as counsel in the situation presented.

In a per curiam opinion, the South Carolina Supreme Court held that there is nothing improper in a recorder serving as counsel for a defendant in a magistrate's court located in a county other than that in which he performs his judicial duties. State v. Wise, Memorandum Opinion No. 76-44, June 2, 1976. The court did not, however, reach the question of whether or not there may be improper conduct if the recorder serves as counsel and recorder in the same county as the magistrate's court. Although there seems to be no specific conflict with the Code of Judicial Conduct in a city recorder serving as defense counsel in a magistrate's court in the same county in which the recorder serves, the ultimate determination as to the propriety of this practice will be for the courts.

I trust the preceding discussion adequately answers your question, however, if any further explanation is required, please feel free to contact me.

Very truly yours,

Richard P. Wilson
Assistant Attorney General

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