



BILLY W. BYRD
CRIMINAL DISTRICT ATTORNEY
UPSHUR COUNTY

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OPINION COMMITTEE

January 29, 2008

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FILE # ML-45539-08
I.D. # 45539

The Honorable Greg Abbott
Attorney General
PO Box 12548
Austin, Texas 78701

RQ-0674-GA

RE: Attorney General Opinion Request - Justice of the Peace Performing Appointed Criminal Appellate Work

Dear General Abbott:

We respectfully request an opinion regarding the question of whether a sitting Justice of the Peace may be appointed to and subsequently represent criminals found guilty, but requesting a court appointed attorney. We are concerned that this is a conflict of interest between his duties as an advocate and his duties as a Justice of the Peace. Our brief is contained herein.

Facts: We have in our county a Justice of the Peace who is licensed as an attorney in good standing by the State Bar of Texas. The Justice of the Peace took office on January 1, 2007. He was an Assistant District Attorney in our county immediately prior to assuming office.

The Justice of the Peace has requested that he be put on the Criminal Appellate Appointment List and the Family Law Appointment list. He does not seek appointment on the Criminal Trial Appointment List.

Issue: Whether appointment on the Criminal Appellate Appointment List presents a conflict of interest with the duties of the Justice of the Peace pursuant to Art. 5 §19 of the Texas Constitution?

Rules: "Justice of the Peace Courts shall have original jurisdiction in criminal matters of misdemeanor case punishable by fine only and such other jurisdiction as may be provided by law." Texas Const. Art. 5 §19. Prosecutions in Justice Court are conducted in Upshur County by the Criminal District Attorney. Code Crim. Pro. Art. 45.101. The Justice of the Peace also serves as a magistrate and has the duty to advise accused persons of rights, arrest, setting and taking bail bond, receiving complaints, appointing attorneys. Code Crim. Pro. Art. 6.01 etser, 15.17, 15.03, 15.04, 7.09. They further have the duty to issue all process intended to aid in presenting and suppressing crime, and to cause the arrest of offenders by the use of lawful means in order that they may be brought to punishment. Tex. Codes. Crim. Pro. Art. 2.10.

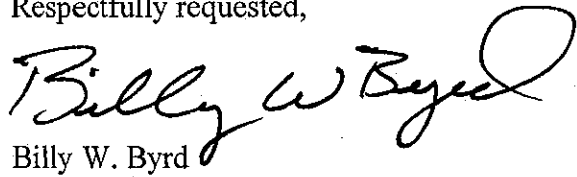
Given the duties of the Justice of the Peace it would appear that there is an inherent conflict in his judicial duties and his duties as an attorney in a criminal appeal.

However, the code of Judicial Conduct, Canon 6 c.(1)(d) seems to exempt Justices of the Peace from acting as a lawyer except in a proceeding in which he has served as a Judge or in any proceeding related thereto.

There is no system in place on the appointment rotation schedule to ensure the Justice of the Peace did not set bond, hear a related case, issue a warrant in the matter appointed.

We are of the opinion that there is an inherent conflict of interest in this matter and respectfully seek your opinion.

Respectfully requested,

A handwritten signature in black ink, reading "Billy W. Byrd". The signature is written in a cursive style with a large, looping initial "B".

Billy W. Byrd