

Judicial Inquiry Commission

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August 16, 1978

The Judicial Inquiry Commission has reviewed your request for an opinion in which you ask:

“May a district judge who is a properly licensed real estate broker form a real estate company whereby he is the sponsoring broker for said real estate company but where the real estate company being formed would bear no semblance of the name of said sponsoring real estate broker nor would his name appear in any advertisements, identification cards, etc.; i.e., said real estate broker would be passively involved in said real estate company and would not actively solicit business.”

Upon consideration of your question along with the Canons of Judicial Ethics and the applicable law, it is the opinion of this Commission that a judge may not lawfully engage in the undertaking which you propose without being in violation of Canons 3 and 5C(1) and 5C(2) of the Alabama Canons of Judicial Ethics.

Section 34-27-34, Code of Alabama, 1975, as interpreted by the Real Estate Commission of Alabama requires that the sponsoring or qualifying broker of a real estate company be available at all times to discharge his duties “on the basis of an actual supervisory capacity.” In order to hire a salesman to work under him as the qualifying broker, a real estate broker whose principal business is other than that of a real estate broker is required by the Real Estate Commission to provide proof that he will be available at all times to discharge his duties in an actual supervisory capacity. Since the principal business of a judge must be considered to be the performance of the duties and responsibilities of the office to which he has been elected or appointed, a judge could not offer the required proof without violating Canon 3 which provides in pertinent part that:

“[t]he judicial activities of a judge take precedence over his other activities...”

In other words while Canon 3C requires that the judicial activities of a judge take precedence over his other activities, the Real Estate Commission requires that a qualifying broker’s real estate activities take precedence over his other activities. The two are thus completely incompatible.

Further, while under Canon 5C(2) a judge may engage in other remunerative activity such conduct is limited by Canon 5C(1) which requires that a judge refrain from financial

and business dealings that “....interfere with the proper performance of his judicial duties....” A judge who properly performs his judicial duties could not be available at all times to perform the supervisory duties required by law of a sponsoring or qualifying broker of a real estate company.