

Judicial Inquiry Commission

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February 29, 1988

The Judicial Inquiry Commission has considered your request for an opinion concerning whether under the Alabama Canons of Judicial Ethics a judge may prepare legal documents including a contract and deeds as part of a joint business venture between himself, his cousin and a realtor. The judge along with his relative holds an undivided one-tenth interest in a parcel of rural property. The judge and his relative wish to enter into a joint venture with a realtor, who will sub-divide and sell the property. The judge will prepare deeds for execution by him and his relative and will draft the contract between the realtor and himself and his relative.

It is the opinion of the Commission that a judge is not prohibited from drafting legal documents to include execution by a third party non-family member where the judge is included among the parties whose rights are secured by the documents.

Canon 5 of the Alabama Canons of Judicial Ethics governs a judge's extra-judicial activities. That Canon in part specifically provides that:

"A judge should not practice law."

For purposes of regulating the practice of law, the practice of law is defined in Section 34-3-6, Code of Alabama, 1975. In pertinent part, that provision includes the following:

"For a consideration, reward or pecuniary benefit, present or anticipated, direct or indirect, advises or counsels another as to secular law, or draws or procures or assists in the drawing of a paper, document or instrument affecting or relating to any secular rights ..."

Section 34-3-6(2). However, in construing the definition of the practice of law, our Supreme Court has held that:

"[A person] cannot be denied the right to attend to his own affairs ... or required to procure a license to practice law in order to do so by reason that others are interested in the same affairs."

Copeland v. Dobbs, 221 Ala. 489, 491, 129 So. 88 (1930). Therefore, based on the decided interpretation of the Supreme Court of Alabama, it is the opinion of the Commission that the

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described activity does not constitute the practice of law as prohibited under Canon 5F. However, a judge should be ever mindful of the provisions of Canon 5 and should regulate his own extra-judicial activities so as to minimize the risk of conflict with his judicial duties.

Sincerely,

JUDICIAL INQUIRY COMMISSION