

Judicial Inquiry Commission

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October 19, 1990

The Judicial Inquiry Commission has received your request for an opinion concerning whether, under the Alabama Canons of Judicial Ethics, a substitute part-time municipal court judge may practice before the municipal court. Under the facts presented, the city in question has one part-time and one full-time municipal court judge. The city further has a slate of five local attorneys who have been appointed and approved by the mayor to serve as substitute judges whenever the need arises. The direct question asked is whether there exists any ethical prohibition against such a substitute judge representing clients in the same court over which he occasionally presides.

The question is answered in the affirmative. A part-time judge is prohibited by the Alabama Canons of Judicial Ethics from appearing in the court over which he occasionally presides subject to the call of the mayor.

Part-time judges are covered by Canon 5C of the Alabama Canons of Judicial Ethics. That Canon provides in pertinent part as follows:

C. Financial Activities:

- (1) A judge should refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, or exploit his judicial position.
- (2) Subject to the requirements of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity including the operation of a business.
- (3) A judge should manage his investments and other financial interests to minimize the number of cases in which he is disqualified.

In applying this Canon in our previous Advisory Opinion 88-348, the Commission has found that a part-time municipal court judge is prohibited from practicing law before the court over which he presides. Specifically, our previous opinion advises:

Under these provisions, a part-time judge, who practices before his own court, automatically causes his own disqualification in all matters handled by him and all matters related thereto. He therefore violates Canon 5C(1) and (3) by failing to “minimize the number of cases in which he is disqualified.” It is our opinion that a part-time judge is therefore prohibited from practicing before his own court.”

This same rationale applies to a substitute municipal court judge. The substitute municipal court judge knows that he is subject to call as a judge in the municipal court at any time. By agreeing to be available to such call, the substitute judge has agreed to comply with the Canons and to “minimize the number of cases in which his disqualification is required.” He is therefore prohibited from practicing law before the one court in which he is subject to call to sit as judge.

Sincerely,

JUDICIAL INQUIRY COMMISSION