

Judicial Inquiry Commission

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This is in response to your request for an advisory opinion from the Judicial Inquiry Commission. Your question is as follows:

You and your now former law partner coauthored the legal publication Family Practice in Alabama. Royalties from the sale of this book are equally divided. Your former partner practices domestic relations exclusively and would be in your courtroom on a regular basis.

A judge's writing on the law is specifically endorsed by Canon 4A, Alabama Canons of Judicial Ethics. However, that authorization is conditioned upon the requirement that the activity not interfere with the proper performance of judicial duties or cast doubt upon the judge's impartiality. Canon 4. See Advisory Opinions 91-433 (teaching law); 86-297 (publishing and marketing book on legal procedure). Here, your impartiality is subject to question because it is your former law partner who is involved, because his practice is exclusively in the area of the subject matter of the book, and because the two of you have authored a book about that particular area of the law.

However, the authoring and publication of this law book also constitutes a business and financial relationship you have with your former partner. "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." Canon 5. The general rule is that "a judge must disqualify himself or herself when he or she has a business relationship with an attorney appearing before the court." J. Shaman, S. Lubet, J. Alfini, Judicial Conduct and Ethics § 5.19 at 136 (1990). See also Advisory Opinions 81-115 (judge may not lease his building to former law partners); 82-128 (judge must disqualify himself because of continuing financial and business dealings with former firm). Compare Advisory Opinions 83-172 (disqualification not required where judge continues business arrangement in which the judge and an attorney each own a one-half joint interest in a building); 81-116 (disqualification not required where judge merely jointly owns property with former law partners). We see no reason for any exception to the general rule in this case.

The circumstances here create the appearance of partiality and are such that your "impartiality might reasonably be questioned." Canon 3C(l). Here, you have both a professional, financial, and business relationship with your former law partner in the publication of a legal authority in the area of the law in which your former partner practices exclusively.

Therefore, it is the opinion of this Commission that you must disqualify yourself in any case in which your former law partner represents a party so long as you both collaborate on the writing of your book. If your former law partner's appearances in your court are limited and not so frequent as to amount to an interference with the performance of either your judicial duties or with the judicial duties of the judges to whom your cases are assigned upon your disqualification, you must disqualify yourself but may continue to co-author the book. This disqualification may not be remitted under Canon 3D.

However, if your former law partner appears in your court on a regular basis so that your disqualification from his cases constitutes an interference with the performance of your judicial duties, or the judicial duties of other judges upon your disqualification, you must terminate your business and financial relationship with that attorney and will no longer be able to co-author your book. Canon 5. See also Judicial Conduct at 169-170. In that event, the basis for the disqualification will no longer exist and you will not need to disqualify yourself from any case in which your former partner represents a party.

Since the royalties are not the controlling factor and are only one of several circumstances we have considered in determining this issue, your waiver of any royalties while continuing to co-author the book would not affect the existence of the disqualifications described in this opinion.

This advisory opinion has been reviewed and approved by the Judicial Inquiry Commission and is the opinion of the Commission.