

Judicial Inquiry Commission

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July 24, 1995

The Judicial Inquiry Commission had considered your request for an advisory opinion concerning whether attorneys serving for a limited time period on a volunteer and unremunerated basis as special circuit judges to dispose of criminal cases appealed from municipal courts are disqualified from serving as counsel in other cases in the circuit court.

As noted in your request, the Commission previously decided in Advisory Opinion 90-408 that a part-time, substitute municipal court judge is prohibited by the Alabama Canons of Judicial Ethics from representing clients in the court over which he occasionally presides subject to the call of the mayor. This opinion was based upon Canons 5C(1) and (3) in that, by agreeing to be available to serve as a judge whenever called, the substitute judge has agreed to comply with the canon provision to “minimize the number of cases in which his disqualification is required”, but that, by practicing before the municipal court, the judge causes his own disqualification in all matters handled by him and all matters relating thereto.

The situation your opinion request describes appears to be that of a “judge pro tempore” rather than that of a “part-time judge.” See, Compliance With The Canons of Judicial Ethics, subparts A and B. Although not expressly so stated in Advisory Opinion 90-408, it appears that the Commission determined that “on-call” substitute judges are “part-time” judges and, thus, subject to Canon 5C(3). A “part-time judge” serves on a continuing basis; a “judge pro tempore” is a person who is appointed to act temporarily as a judge. While acting as a judge, a judge pro tempore is not required to comply with Canon 5C(3).

A judge pro tempore is required to comply with Canons 1, 2, 3, 4, 5A, 5B, 5C(1), (2), and (4)-(6), 6A, 6B, and 7, and the Compliance provision of the canons further provides that a person who has been a judge pro tempore should not act as a lawyer in a proceeding in which he has served as a judge or in any other proceeding related thereto. Compliance with the applicable canons may very well in some cases dictate that an attorney not accept an appointment to preside as a judge pro tempore over some or all municipal court appeals to a circuit court, but it is the Commission’s opinion that none of the applicable canons create a blanket prohibition on such a judge practicing law before the circuit court.