

## Judicial Inquiry Commission

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The Judicial Inquiry Commission has considered your request for an advisory opinion concerning whether attorneys who are called upon to sit as Special Judges while other judges of the family court are away on court business or vacation are prohibited from practicing law before the family court in other cases. You specify that there is a lengthy list of such attorneys, and that such attorneys are not considered to be “on call” nor are they required to sit when requested to do so.

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 municipal court over which he or she occasionally presides, subject to the call of the mayor. This opinion was based upon Canon 5C(3) in that, by agreeing to be available to serve as a judge whenever called, the substitute judge had agreed to comply with the provision in Canon 5C(3) to “minimize the number of cases in which he is disqualified”, but that, by practicing before the municipal court, the judge caused his own disqualification in all matters handled by him and all matters relating thereto. Although not expressly so stated in the opinion, it appears that the Commission determined that such an on-call substitute judge is a “part-time judge” and, thus, subject to Canon 5C(3).

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. 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 family court cases, but it is the Commission’s opinion that none of the applicable canons create a blanket prohibition on such a judge from practicing law before the family court.