

Judicial Inquiry Commission

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The Judicial Inquiry Commission has considered your request for an advisory opinion whether a circuit judge may publish and market a software program written by him which calculates Workers' Compensation benefits for a specified set of facts and produces a report listing those benefits. You state that this product could be produced in court as part of a trial brief. You also state that the judge will not attempt to personally sell the product to attorneys nor recommend its purchase to attorneys practicing in his court; instead, a closely-held family corporation has been formed to take orders and distribute the program, which is marketed using the corporate name without any identification of the judge with the product.

A judge's extra-judicial activities and quasi-judicial activities are governed by Canons 4 and 5 of the Alabama Canons of Judicial Ethics. Canon 4 provides in pertinent part:

"A judge may engage in activities to improve the law, the legal system, and the administration of justice.

A judge, subject to the proper performance of his judicial duties, may engage in the following quasi-judicial activities, if in doing so he does not cast doubt on his capacity to decide impartially any issue that may come before him:

- A. He may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice."

Under Canon 5C governing financial activities, it is provided:

"(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."

As noted above, Canon 4 specifically allows a judge to write concerning the law so long as it does not cast doubt on his capacity to decide issues before him impartially. Canon 5 speaks similarly prohibiting those financial activities which reflect on the judge's impartiality, interfere with his judicial duties or exploit his judicial position.

In considering the provisions of Canons 4 and 5, it is the opinion of the Commission that the Canons of Judicial Ethics permit judges to write and participate in other

activities concerning the law, and therefore to author the software program at issue. It is further the opinion of the Commission that Canon 5 permits the marketing of this software program authored by a sitting judge and that the marketing of such a software program would not violate Canon 5 unless, of course, the judge uses his position to market the program or allows the marketing process to interfere with the proper performance of the judge's official duties. The steps taken by the judge outlined above appear sufficient to prevent a violation of Canon 5.

Sincerely,

JUDICIAL INQUIRY COMMISSION