

# JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 99-739

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## WRITING ABOUT CASES TRIED BY THE JUDGE

### ISSUE

May a judge write a book about one or more cases over which the judge presided?

**Answer:** No, not before final disposition of the case. Even after final disposition, such writing is discouraged, and a judge should not write about a capital case in which the death penalty was imposed before the sentence is carried out.

### FACTS

A retired active circuit judge proposes to write a book about one or more cases the judge tried before retirement. For the most part, the cases contemplated are capital cases in which the sentence has not yet been carried out. The judge envisions writing a factual account about the victim, the defendant, and the trial.

### DISCUSSION

Retired active judges who are serving part-time on any state court in an active duty status are required to comply with all of the Alabama Canons of Judicial Ethics other than Canon 6C and Canon 5C(3), D, E, F, and G. Compliance With the Canons of Judicial Ethics, §D(2).

Canon 3A(6) requires a judge to “abstain from public comment about a pending or impending proceeding in any court,” other than public statements in the course of official duties and explanations of the procedures of the court for public information.

Canon 4 states that a judge “may engage in activities to improve the law, the legal system,

and the administration of justice.” Canon 4A permits a judge to write concerning the law, the legal system, and the administration of justice, “subject to the proper performance of his judicial duties, ... if in doing so he does not cast doubt on his capacity to decide impartially any issue that may come before him.”

Under Canon 5A, “A judge may write ... on nonlegal subjects” if such writing does not “detract from the dignity of his office or interfere with the performance of his judicial duties.” Under Canon 5C(1), a judge must “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 5C(6) provides that “[i]nformation acquired by a judge in his judicial capacity should not be used or disclosed by him in financial dealings or for any purpose not related to his judicial duties.”

Except as permitted under Canon 3A(6), a judge may not comment publicly about any pending case. The Commission has previously noted that a case is “pending” while it remains on appeal.

Although public comment is not completely proscribed after final disposition of a case, any such comment should be approached with considerable caution. The Commission has stated in past opinions that, “except under the most extraordinary circumstances, a judge should refrain from commenting on specific cases in which he has participated, especially where such comment could compromise the validity of any ruling or order entered by him in such cases.” Advisory Opinions 80-85 and 85-247. The Commission observed the following in Advisory Opinion 85-247:

While the Canons are not specifically addressed to commentary by a judge on past cases, the Canons do require that a judge should perform the duties of his office impartially and diligently, Canon 3, and he should uphold the integrity and independence of the judiciary, Canon 1. Judges should, in upholding these Canons, avoid any comments about the trial of a decided case if such comments could cause the decision to be questioned or might cast dispersions (sic) upon the legal system.

As the inquiring judge recognizes, a capital case in which the death penalty has been imposed is not truly over until the sentence is carried out. Given the risk of creating grounds for questioning the judgment in such cases, it is the opinion of the Commission that a judge may not write about capital cases until the sentence is carried out.

The Commission also notes that a judge must avoid exploitation of his judicial position (Canon 5C(1)), and may not disclose any non-

public information about a case over which the judge presided that was acquired by the judge in his judicial capacity. Canon 5C(6).

#### REFERENCES

Alabama Advisory Opinions 80-85 and 85-247.

Alabama Canons of Judicial Ethics, Canons 3A(6), 4, 4A, 5A, 5C(1), 5C(6), and Compliance With the Canons of Judicial Ethics, §D(2).

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This opinion is advisory only and is based on the specific facts and questions submitted by the judge who requested the opinion pursuant to Rule 17 of the Rules of Procedure of the Judicial Inquiry Commission. For further information, you may contact the Judicial Inquiry Commission, 800 South McDonough Street, Suite 201, Montgomery, Alabama 36104; tel.: (334) 242-4089; fax: (334) 240-3327; e-mail: [jic@alalinc.net](mailto:jic@alalinc.net).