

## JUDICIAL INQUIRY COMMISSION

DATE ISSUED: MARCH 17, 2006

ADVISORY OPINION 06-863

### REFEREE SERVING AS SPECIAL CIRCUIT JUDGE AS CANDIDATE FOR NON-JUDICIAL OFFICE

#### ISSUE

Can a full time referee who sits as a special circuit judge continue in his position while seeking election to a non-judicial office?

**Answer:** No, under the facts presented the referee's duties include sitting as a judge pro tempore who must resign his office to seek election to a non-judicial position.

#### FACTS

A full time senior trial referee is contemplating seeking election to a seat in the House of Representatives. The referee also sits as a special circuit judge and as practical matter this use of the referee has become necessary to the position.

#### DISCUSSION

A full time senior trial referee who also sits as a special circuit judge is governed by the Alabama Canons of Judicial Ethics. Under these facts, by serving as a special circuit judge, the referee serves as a judge pro tempore as defined in Section B of the Compliance section of the Alabama Canons of Judicial Ethics. In pertinent part the Compliance section provides as follows.

Judges whose duties are not exclusively judicial or who do not serve on a full-time basis cannot be subjected to a strict, literal compliance with the Canons of Judicial Ethics.

**B. JUDGE PRO TEMPORE.** A judge pro tempore is a person who is appointed

temporarily to act as a judge.

(1) While acting as such, a judge pro tempore is not required to comply with Canon 5C, D, E, F, and G and Canon 6C.

Canon 7 concerning political activity is not one of the Canons from which the judge pro tempore is exempt.

Canon 7.A(2) provides

A judge shall resign his or her office when the judge becomes a candidate either in a political primary or in a general election for non judicial office, except that the judge may continue to hold judicial office while being a candidate for election to any judicial office or while being a candidate for election to a state constitutional convention or commission.

Clearly, under this provision, a candidate for judicial office must resign his or her position as a judge pro tempore.

#### REFERENCES

Alabama Canons of Judicial Ethics, Canon 7A(2) and Compliance with the Canons of Judicial Ethics.

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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, P. O. Box 303400, Montgomery, Alabama 36130-3400; tel.: (334) 242-4089; fax: (334) 353-4043; E-mail: [jic@alalinc.net](mailto:jic@alalinc.net).