

# JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 07-888

## QUASI-JUDICIAL AND EXTRA-JUDICIAL ACTIVITY – CONTRIBUTING A COLUMN TO A MONTHLY RELIGIOUS MAGAZINE

### ISSUE

May a circuit judge write a column for a monthly Christian magazine? **Answer:** Yes, if the judge adheres to Canons 1, 2A, 2C, 3A(6), 4, 4A, 5A, and 5C(6).

### FACTS

A circuit judge would like to write, without compensation, a column in a monthly Christian magazine. He would control its content. Although he assumes that the content would include legal issues, he would not offer legal advice.

### DISCUSSION

Canon 4 of the Alabama Canons of Judicial Ethics provides that a judge may engage in activities, including writing, to improve the law, the legal system, and the administration of justice if such writing about the law, the legal system, or the administration of justice does not interfere with the proper performance of the judge's judicial duties and, "if in doing so he does not cast doubt on his capacity to decide impartially any issue that may come before him," Canon 4A. Canon 5A permits a judge to write about non-legal subjects if, in doing so, he does not "detract from the dignity of his office or interfere with the performance of his judicial duties."

The Commission has advised that a judge may write, for publication, articles concerning legal topics if he closely adheres to the provisions

of Canon 4. *See, e.g.*, Advisory Opinions 97-667 (a judge may write, for a non-legal trade association magazine, an article concerning the judicial process); 90-396 (a judge may contribute, to a newspaper, quarterly articles about juvenile justice and the status of children and families in Alabama); 86-265 (the judges in a circuit may rotate the authorship of a monthly newspaper column designed to educate the public on such matters as child abuse laws, child support laws, jury service, criminal sentencing, and the like).

Canon 4A's "very limiting restriction" that the judge must avoid casting doubt on his capacity to decide impartially any issue that may come before him includes legal issues as well of issues of fact. Advisory Opinion 86-265. Thus, the subject matter included in a column designed to improve the law, the legal system, or the administration of justice "would have to be very limited." *Id.* As the requesting judge notes, a judge must scrupulously refrain from giving legal advice or commenting on substantive law. *See id.* "This is such a sensitive area that an individual judge may very well deem the writing of such a column to be completely inadvisable." *Id.*

In addition, 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. *See also* Canon 5C(6), which provides that "[i]nformation acquired by a judge in his judicial capacity should not be used or disclosed by him ... for any purpose not related to his judicial duties."

[E]xcept 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. ... Judges should ... avoid any comments about the trial of a decided case if such comments could cause the decision to be questioned or might cast dispersions upon the legal system.

Advisory Opinion 85-247. *See also* Canon 1 (“A judge should uphold the integrity and independence of the judiciary.”); Canon 2A (“A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.”)

Thus, although public comment is not completely prohibited after final disposition of a case, any comment should be approached with “considerable caution.” Advisory Opinion 99-739. As noted by the Supreme Court in *Matter of Sheffield*, 465 So.2d 350, 355 (Ala. 1984), “Obviously, judges walk a fine line between the duties and prohibitions of Canon 3A(6).”

If the dissemination of the publication is limited geographically and competitors with other similar publications consider the judge’s authorship of the column to appear to advance the promotion of one local publisher over others, the judge should decline to write the column. *See* Advisory Opinion 86-265. This is necessitated by the provision of Canon 2C that a judge should not lend the prestige of his office to promote the private interests of others. *Id.*

Finally, in contributing to a publication that serves and identifies with particular private concerns of others, the judge must be mindful of Canon 2C’s prohibition of conveying or permitting others to convey the impression that they are in a special position to influence him.

In summary, a judge may contribute a monthly column to a magazine if such activity does not interfere with the proper performance of his judicial duties or detract from the dignity of his office; if he does not cast doubt on his capacity to decide impartially any factual or legal issue that may come before him; if he refrains from giving legal advice, commenting on substantive law, disclosing non-public information acquired by him in his judicial capacity, and commenting about a pending or impending proceeding in any court; if he does not lend the prestige of his office to promote the private interests of others; if he promotes the public confidence in the integrity and impartiality of the judiciary; and if he does not convey or permit others to convey the impression that they are in a special position to influence him.

## REFERENCES

Advisory Opinions 99-739, 97-667, 90-396, 86-265, 85-247.

Alabama Canons of Judicial Ethics, Canons 1, 2A, 2C, 3A(6), 4, 4A, 5A, 5C(6).

*Matter of Sheffield*, 465 So.2d 350, 355 (Ala. 1984).

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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

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