

## JUDICIAL INQUIRY COMMISSION

DATE ISSUED: May 5, 2020

ADVISORY OPINION 20-948

---

BUSINESS & FINANCIAL ACTIVITIES: BOOKKEEPER FOR FORMER FIRM & FOR PARENT; COMPENSATION FROM FORMER FIRM

### ISSUES

- I. Is a judge permitted, under the Alabama Canons of Judicial Ethics, to continue the judge's decades' practice of rendering bookkeeping services to the judge's former firm, which now consists only of a parent of the judge? **Answer:** No.
- II. May the judge provide bookkeeping services regarding the parent's personal finances? **Answer:** Yes.
- III. May the judge's former law firm compensate the judge for that service, as a W-2 employee of the firm? **Answer:** No.

### FACTS

Before taking office, the district judge was in a law firm with a parent of the judge. The judge transferred the judge's interest in the firm to the judge's parent, who continues to practice. The judge's parent is closing or has closed a few of the judge's cases, and the remaining were transferred to other attorneys. The judge provided bookkeeping services to the firm for decades, e.g., paying bills, balancing checkbooks, helping a certified public accountant prepare tax returns, etc. The judge's parent does not practice in the judge's court and has no plans to do so, but will ultimately practice only in the probate court.

### DISCUSSION

Excluding the canon provisions that pertain to judicial duties' taking precedence over all other activities, the following provisions are pertinent to a judge's financial activities:

- |             |   |
|-------------|---|
| Canon 2     | A judge should avoid impropriety and the appearance of impropriety in all his activities.   |
| Canon 2A    | A judge . . . should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.   |
| Canon 2C    | A judge . . . should not lend the prestige of his office to advance the private interests of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him. |
| Canon 3C(1) | A judge should disqualify himself in a proceeding in which . . . his impartiality might reasonably be questioned . . . .  |
| Canon 5     | A judge should regulate his extra-judicial activities to minimize the risk of conflict with his judicial duties.  |

Canon 5C     *Financial Activities.*

- (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.
- (2) Subject to the requirements of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity including the operation of a business.
- (3) A judge should manage his investments and other financial interests to minimize the number of cases in which he is disqualified.

Canon 5F     A judge should not practice law.<sup>1</sup>

Canon 6     A judge may receive compensation . . . for the . . . extra-judicial activities permitted by these canons, if the source of such payments does not give the appearance of influencing the judge in his judicial duties or otherwise give the appearance of impropriety, subject to the following restriction[]:

A. Compensation. Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.

The Commission has approved various limited business relationships between a judge and an attorney. See, e.g., Advisory Opinion 81-116 (as long as there are no problems regarding shared payment of debt, taxes, and insurance, ownership with an attorney of real property that produces no income and is listed to be sold is permissible). The Commission has also advised that a judge may receive compensation for legal services he/she performed prior to becoming a judge. See, e.g., Advisory Opinion 13-921 and opinions cited therein. However, none of these opinions involve a continuation of the judge’s employment with the judge’s former law firm.

Except for the payment of fees earned before taking office or for the judge’s interest in the firm, a judge is required to sever all ties with the judge’s former firm upon assuming the judicial office. Cynthia Gray, “New Judges: Winding-up a Law Practice,” *Judicial Conduct Reporter* (Fall 2008). See, e.g., Michigan Advisory Opinion JI-89 (1994) (a new judge may not use the

---

<sup>1</sup> In addition to Canon 5F, the practice of law by a judge is a violation of Art. VI, § 147, Ala. Const. (“No judge of any court of this state shall, during his continuance in office, engage in practice of law . . . .”); § 34-3-11, Ala. Code 1975 (“Any judge of a court of record in this state who practices law in any of the courts of this state, or of the United States, or who renders any professional services or gives any legal advice, must on conviction be fined in such sum as the jury or court trying the same may assess, not less than \$100 nor more than \$1,000.”); and § 34-3-14 (“The judge of any court of record . . . must not practice law.”).

---

library in the office of her former firm for research and opinion writing because regular and continuing contacts and access to the judge's former firm raise questions regarding judicial impropriety in contravention of the canons pertaining to avoiding impropriety and appearance of impropriety, prohibition of certain financial activities, and prohibition of the practice of law, and open the door to possible leaks of client confidences and secrets protected by the Rules of Professional Conduct). See also Charles Gardner Geyh et al., Judicial Conduct and Ethics § 7.09[3] (5th ed. 2013) (judges must avoid maintaining economic ties to their former firms). Therefore, any tie is solely for the purpose of winding up the judge's former law practice.

In addition, the judge's provision of non-legal services to the judge's former law firm raises more specific concerns. Under a reasonable-person standard, there would be an appearance the judge is still engaged in the practice of law, in violation of Canon 5F, despite the fact the bookkeeping duties may be entirely non-legal. As the Nebraska Judicial Ethics Committee noted:

The winding up of the affairs of the professional corporation must be accomplished in such a fashion that the judge-appointee, from and after the date of swearing-in, will have no further involvement or participation in the affairs of the professional corporation. It would not require even a slight stretch of the imagination to predict the real possibility of third parties concluding that the judge . . . is still engaged in the practice of law, still making strategic decisions concerning the cases which are still pending. From and after the date of the swearing in of the judge, the only permitted involvement must be the passive receipt of fees for those cases in which the appointee has previously rendered legal services.

Nebraska Advisory Opinion 97-2. See, e.g., Alabama Advisory Opinion 83-182 (a new judge may not continue to serve as a trustee for bankruptcy estates even though legal counsel has been employed to handle all legal matters because the judge's service as trustee was incident to his law practice and, thus, his continuation as trustee would violate Canon 5F). See also Advisory Opinion 13-920 (a new judge may not assist in finalizing the issuance of a title-insurance policy because such activity, at the very least, gives the appearance the judge is practicing law).

The prohibited practice of law could be particularly implicated if the proposed activities of "paying bills, balancing checkbooks, helping CPA prepare tax returns, etc." were to include the probate work of the attorney, e.g., the bookkeeping required in conservatorships or estates for probate. As Rule 5.3, Ala. R. Prof. Cond., recognizes, the assistants who lawyers employ in their practice, "whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services." Conceivably, any bookkeeping services in the context of probate-court matters could ultimately be challenged in adversarial legal proceedings.

In addition to Canon 5F concerns, the judge's proposed activity raises concern under Canons 2C and 5C(1): the judge could reasonably be perceived as lending the prestige of the judicial office to advance the private interests of others. Although unintentional, the use of the prestige of the judicial office could be implicated in the judge's execution of ministerial bookkeeping functions. For example, if the judge were the firm's bookkeeper, clients with a late-payment history could

feel compelled to timely pay; clients could be reluctant to question billing; litigants in the judge's court could attempt to curry the judge's favor by seeking legal services at the parent's firm; creditors who are frequent parties in the judge's court could give more favorable treatment to the firm to curry the judge's favor; etc.

See Advisory Opinion 92-459, where the Commission advised that a full-time municipal judge may not perform "a paralegal type duty" of researching and preparing appellate briefs (without use of the judge's signature or contact with clients) for an attorney in felony cases. In finding that such activity would violate Canons 2, 2A, 2C, 3C(1), and 5, the Commission observed:

Considering the nature of the employer-employee and judge-lawyer relationships, the very fact that an attorney has hired a judge to act as his law clerk would certainly convey the impression that that attorney was in a special position to influence the judge. "A judge must avoid all impropriety and appearance of impropriety. He must expect to be the subject of constant public scrutiny. He must, therefore, accept restrictions on his conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly." Commentary to Canon 2, Alabama Canons of Judicial Ethics.

Finally, although the judge's parent will not practice in the judge's court, the judge's partiality could be questioned in other contexts. For example, would a reasonable person question the judge's impartiality regarding cases in which a client of the firm has timely paid the parent's attorney fees or has paid significant attorney fees or regarding cases in which a client has a long history of late payments or has not paid at all? See, e.g., Advisory Opinion 83-182 (due to the trustee's relationships with the creditors of the estate, it would appear to be difficult for the judge to continue to serve as trustee and to minimize conflicts with his judicial duties).

In conclusion, the judge may not continue rendering bookkeeping services to the judge's former firm, but the judge may perform bookkeeping regarding the personal finances of the judge's parent. However, the judge's law firm may not compensate the judge for that service.

#### REFERENCES

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

Alabama Advisory Opinions 13-921; 13-920; 92-459; 83-182; 81-116.

Art. VI, § 147, Ala. Const. 1901.

Ala. Code 1975, §§ 34-3-11, 34-3-14.

Ala. R. Prof. Cond., Rule 5.3.

Michigan Advisory Opinion JI-89 (1994).

Nebraska Advisory Opinion 97-2.

Charles Gardner Geyh et al., Judicial Conduct and Ethics § 7.09[3] (5th ed. 2013).

Cynthia Gray, “New Judges: Winding-up a Law Practice,” Judicial Conduct Reporter (Fall 2008).

---

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 18 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.