

JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 22-954

PART-TIME MUNICIPAL JUDGE: REPRESENTATION OF CLIENTS IN THE PRACTICE OF LAW

ISSUES

Is a part-time municipal judge who is actively engaged in the practice of law permitted to represent an individual who previously appeared in municipal court before the judge in an unrelated matter?

Answer: Yes.

Is a part-time municipal judge's law partner permitted to represent a client who appeared in municipal court before the judge in an unrelated matter?

Answer: The Alabama Canons of Judicial Ethics do not apply to the conduct of a part-time judge's law partner who is not a judge.

FACTS

A newly appointed part-time municipal judge maintains a private law practice with a law partner in which the judge is actively engaged in the representation of clients.

DISCUSSION

Canon 5F prohibits judges from practicing law while serving as a judge. However, Section A of the Compliance with the Canons of Judicial Ethics provisions exempts part-time judges from compliance with Canons 5D, E, F, and G, and Canon 6C. Therefore, a part-time judge may engage in the practice of

law, subject to some limitations that may be imposed by other Canons.

Yet, the Compliance provisions also limit that authorization by prohibiting a judge from "act[ing] as a lawyer in a proceeding in which he [or she] has served as a judge or in any other proceeding related thereto." Compliance with the Canons of Judicial Ethics § A(2). This limitation applies no matter how minor or insignificant the judge's involvement in the case may have been. *See* Advisory Opinion 85-251.

For example, in *Browning v. State*, 607 So. 2d 339, 340 (Ala. Crim. App. 1992), the Alabama Court of Criminal Appeals overturned a defendant's conviction of trafficking in marijuana and remanded the case back to the circuit court for a new trial because an attorney who represented the defendant during the first trial signed a search warrant as a municipal judge in connection with the case. The court held that there was an "actual conflict of interest" between the attorney and the defendant and that the attorney violated both the Canons of Judicial Ethics and the Alabama Rules of Professional Conduct. *Id.* at 340; *see also* Advisory Opinion 90-407 (a municipal judge who also serves as a part-time assistant district attorney may not act as an attorney in a proceeding in which he has issued warrants in his capacity as the municipal judge).

Section A(2) of the Compliance provisions also disqualifies a part-time judge from acting as an attorney in “any other proceeding related thereto.” Proceedings are “related” if they involve the same “matter in controversy”—i.e., where the same fact, event, course of events, circumstance, situation, or question is relevant to both cases. *Rushing v. City of Georgiana*, 361 So. 2d 11, 12 (Ala. 1978). In other words, “if issues involved in the proceeding in which the part-time lawyer judge served as a judge are likely to be of significance in the matter in which he or she is contemplating employment as a lawyer, the proceedings are related, and the representation must be declined.” Cynthia Gray, *An Ethics Guide for Part-Time Lawyer Judges* 52 (Am. Judicature Soc’y 1999).

However, the disqualifying provision in § A(2) of the Compliance provisions do not disqualify a judge from acting as a lawyer in an unrelated proceeding, even though the client may have previously appeared or, in the future, may appear before the judge in municipal court.¹

As for whether the part-time judge’s law partner is permitted to represent a client who appeared in municipal court before the judge in an

unrelated matter, the Commission does not have jurisdiction to advise non-judge members of a municipal judge’s law firm as to whether similar legal representation would constitute unethical conduct. Advisory Opinion 81-98.

The Commission notes that, as a part-time judge engaged in the practice of law, the judge’s conduct is also governed by the Alabama Rules of Professional Conduct, as is the conduct of the part-time judge’s law partner or firm over whom the Commission does not have jurisdiction. Therefore, for questions regarding representation of clients, the Commission encourages part-time judges engaged in the practice of law to seek additional advice from the Alabama State Bar regarding the application of the Rules of Professional Conduct.

REFERENCES

Alabama Canons of Judicial Ethics 5C, 5F, Compliance with the Canons of Judicial Ethics § A.

Alabama JIC Advisory Opinions 81-98, 85-521, 89-379, 90-407.

Browning v. State, 607 So. 2d 339 (Ala. Crim. App. 1992).

¹ A part-time judge should be mindful of potential disqualification issues arising from the judge’s representation of clients who may be involved in proceedings before the judge. See, e.g., Advisory Opinion 89-379.

Cynthia Gray, *An Ethics Guide for Part-Time Lawyer Judges* (Am. Judicature Soc'y 1999).

Rushing v. City of Georgiana, 361 So. 2d 11 (Ala. 1978)

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 Alabama 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; email: jic@jic.alabama.gov.