

JUDICIAL INQUIRY COMMISSION

DATE ISSUED: AUGUST 3, 2023

ADVISORY OPINION 23-956

BUSINESS & FINANCIAL ACTIVITIES: JUDGE AS NOTARY PUBLIC

ISSUES

Is it permissible under the Alabama Canons of Judicial Ethics for a full-time municipal judge to also hold a commission as a notary public?

Answer: Yes.

FACTS

A full-time municipal judge was commissioned as a notary public prior to being appointed a municipal judge. The judge's commission is set to expire this year. The judge has not used the notary public commission since being appointed as municipal judge.

DISCUSSION

The Commission has not yet answered the question of whether a judge may serve as a notary public. Upon examining relevant opinions from other jurisdictions that have answered this question, there are two main concerns that must be addressed when a judge wishes to serve as a notary public.

The first concern is whether the judge's service as a notary public would violate any provisions of the Alabama Constitution or Alabama statutory law. Canon 2A requires judges to "respect and comply with the law." Article VI, Section 147(b) of the Alabama Constitution of 2022 provides, "No judge, except a judge of probate court, shall seek or accept

any nonjudicial elective office, or hold any other office of public trust, excepting service in the military forces of the state or federal governments." It does not appear that the question of whether a notary public holds an "office of public trust" has been answered in Alabama. Regardless, Article VI, Section 145 of the Alabama Constitution of 2022, pertaining specifically to municipal courts, provides that judges of municipal courts are not subject to the prohibition in Section 147(b).

Additionally, Article XVII, Section 280 of the Alabama Constitution of 2022 provides,

"No person holding an office of profit under the United States, except postmasters, whose annual salaries do not exceed two hundred dollars, shall, during his continuance in such office, hold any office of profit under this state; nor, unless otherwise provided in this Constitution, shall any person hold two offices of profit at one and the same time under this state, *except* justices of the peace, constables, *notaries public*, and commissioner of deeds."

(Emphasis added.) *See also* Ala. Code § 36-2-1(b) (containing the same provision without exemption for justices of the peace). Similar to the question under Section 147(b), the Commission is unaware of any authority within Alabama that determines whether a notary public holds an "office of profit under th[e]

state.” However, Section 280 provides an exemption for notaries public. Thus, it would appear that persons holding an office of profit under the state while also holding a commission as a notary public do not violate Section 280.

Under the facts presented, the exemptions in Sections 145 and 280 would both apply because the inquiring judge is a municipal judge and would simultaneously hold the offices of municipal judge and notary public. Therefore, it appears that a full-time municipal judge may serve as a notary public without violating Canon 2A.¹

The second concern is whether a municipal judge’s service as a notary public would violate the provisions of Canon 5C. Canon 5C(1) provides, “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.” Canon 5C(3) further provides, “A judge should manage his investments and other financial interests to minimize the number of cases in which he is disqualified.” The simple act of

notarizing a document for an individual is not, in the opinion of the Commission, sufficient to reflect adversely on the judge’s impartiality or require the judge’s disqualification in a case involving that party. “[T]here is nothing unethical in a judge serving as a notary public, particularly in light of the authority otherwise given to judges to take oaths and acknowledgments.” New York Advisory Opinion 14-107 (citing New York Advisory Opinion 03-129); *see* Ala. Code § 12-14-31 (authorizing municipal judges to administer oaths); *see also* Connecticut Advisory Opinion 2016-01. Additionally, it is unlikely that serving as a notary public would substantially interfere with the municipal judge’s duties.

However, in serving as a notary public, a judge is voluntarily making himself or herself a witness in certifying the acknowledgment of documents under his or her seal.² This could require the judge to disqualify himself or herself in proceedings where a document that the judge notarizes is at issue. *See* Canon 3C(1). It is unlikely, however, that a municipal judge who also serves as a

¹ The Commission’s advisory opinion authority extends only to questions regarding the application of the Canons of Judicial Ethics. The Commission may not provide advice on questions regarding the application of constitutional or statutory law. Therefore, if the Commission’s understanding of Sections 145, 147, or 280 are later held to be incorrect, then a municipal judge would be prohibited by Canon 2A from serving as a notary public.

² In this instance, a judge would be voluntarily making themselves a *fact* witness rather than a *character* witness. Under Canon 2C, a judge may not voluntarily testify as a character witness in a proceeding; however, this provision does not prohibit a judge from voluntarily participating as a fact witness, although it is generally discouraged. Alabama Advisory Opinion 98-705.

notary public would ever be presented with such an issue.

Municipal courts are courts of limited jurisdiction. *See* Ala. Code § 12-14-1 (conferring jurisdiction to municipal courts over prosecutions for breaches of municipal ordinances); *see generally* T. Brad Bishop, *Municipal Courts* § 1.12 at 10–12 (4th ed 2012). Based on the limited jurisdiction of the municipal court, it is unlikely that a municipal judge would be required to decide the validity of documents which he or she notarized in these types of cases. *See* Ala. R. Crim. P. 2.3 (requiring a criminal complaint be “made upon oath before a judge, magistrate, or official authorized by law to issue warrants of arrest,” which does not include a notary public (*see* Ala. Code § 36-20-73)). Therefore, it is unlikely that a municipal judge would violate Canon 5C(3) in failing to minimize the number of cases in which he or she is disqualified by serving as a notary public.

In cases where a municipal judge is faced with a document that he or she has notarized, the judge should determine whether disqualification might be required. Again, “there is nothing unethical in a judge serving as a notary public.” New York Advisory Opinion 14-107 (citing New York Advisory Opinion 03-129). Therefore, a municipal judge’s service as a notary would not, by itself, create a reasonable question as to the judge’s impartiality requiring the judge’s disqualification. But, a municipal judge should consider the facts of the case to determine whether

the judge might be a material witness in the case. *See* Canon 3C(1)(d)(iii).

Because a municipal judge’s service as a notary public would not reflect adversely on the judge’s impartiality and is unlikely to interfere with the performance of the judge’s judicial duties, and would potentially cause the judge’s disqualification in only a minimum number of cases, a municipal judge would not violate any of the provisions of Canon 5C by serving as a notary public so long as the judge does not exploit his or her judicial office.

REFERENCES

Alabama Canons of Judicial Ethics 2A, 2C, 3C(1), 3C(1)(d)(iii), 5C, 5C(1), 5C(3).

Ala. Code §§ 12-14-1, 12-14-31, 36-2-1(b), 36-20-73.

Ala. Const. art. VI, §§ 145, 147 (Off. Recomp. 2022).

Ala. Const. art. XVII, § 280 (Off. Recomp. 2022).

Alabama JIC Advisory Opinions 98-705.

Ala. R. Crim. P. 2.3.

Connecticut Advisory Opinion 2016-01.

New York Advisory Opinions 03-129 and 14-107.

T. Brad Bishop, *Municipal Courts* § 1.12 (4th ed. 2012).

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.