

Judicial Inquiry Commission

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November 1, 1982

The Judicial Inquiry Commission has considered your request for an opinion concerning whether an active retired judge, who serves part-time on assignments by the Chief Justice of the Alabama Supreme Court, may, under the Canons of Judicial Ethics, serve as a Hearing Officer (Administrative Law Judge) to hear appeals by State Employees to the State Personnel Board. As Hearing Officer, the judge would make findings of fact and recommendations of action to be taken by the State Personnel Board.

It is the opinion of the Commission that an active retired judge, who serves on a part-time basis, may accept an appointment as Hearing Officer for the State Personnel Board. This opinion is based upon Section D(2) of the "Compliance" provisions of the Alabama Canons of Judicial Ethics. Section D(2) provides that:

"Retired and supernumerary justices or judges, who are serving part time on the Supreme Court or on either of the courts of appeals or on any circuit court or district court in the state, in an active duty status, shall be required to comply with all of these Canons, except Canon 5C (3) , D, E, F, G and Canon 6C."

Thus, active retired judges, who serve part-time are exempted from the restrictions of Canon 5G of the Alabama Canons of Judicial Ethics. That canon provides that:

"It is desirable that a judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of law, the legal system, or the administration of justice or unless required by law. A judge, however, may represent his country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities."

Thus, an active retired judge, who serves part-time is not prohibited from accepting an appointment as Hearing Officer for the State Personnel Board, a "governmental" "position concerned with issues of fact."

The Commission does not address the question of whether such a judge may receive compensation for serving as a Hearing Officer in addition to his active retirement pay.