

Judicial Inquiry Commission

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September 29, 1987

The Judicial Inquiry Commission has considered your request for an opinion concerning whether under the Alabama Canons of Judicial Ethics a circuit court judge is permitted to prepare state and federal income tax returns for compensation or for members of his family without receiving compensation.

It is the opinion of the Commission that while the Alabama Canons of Judicial Ethics do not per se prohibit a circuit court judge from engaging in the business of federal and state tax return preparation, a judge who engages in such an enterprise, whether or not for profit, would find it almost impossible to do so without violating the provisions of Canon 5 of the Alabama Canons of Judicial Ethics.

Canon 5 governs extra-judicial financial, civic and charitable activities. Canon 5C is addressed specifically to financial activities and provides:

- “(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.
- (4) Neither a judge nor a member of his family residing in his household should accept a gift, bequest, favor, or loan from anyone if it reflects expectation of judicial favor.

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- (6) Information acquired by a judge in his judicial capacity should not be used or disclosed by him in financial dealings or for any purpose not related to his judicial duties.”

Particularly as to provisions 5C(l) and (3) quoted above, a judge engaging in extra-judicial business activities must be aware of the disqualification provisions of Canon 3C. If the business activity being considered by a judge is likely to cause the judge's disqualification in any but the rarest instances in proceedings which ordinarily come before the judge, then the judge must refrain from engaging in that business enterprise. This same restriction should be applied whether or not the enterprise is engaged in for profit.

The preparation of tax returns for family members only would pose fewer chances for causing disqualification in judicial proceedings and, if it took no time away from the judge's official duties would cause fewer problems.

Sincerely,

JUDICIAL INQUIRY COMMISSION