

Judicial Inquiry Commission

800 SOUTH MCDONOUGH STREET
SUITE 201
MONTGOMERY, ALABAMA 36104

December 21, 1988

The Judicial Inquiry Commission has considered your request for an opinion concerning the private practice of law by part-time municipal court judges. Three questions are presented as follows:

- (1) May a part-time municipal judge who practices law practice before his own court?
- (2) May a part-time judge represent a criminal defendant in courts other than his own where
 - (a) the municipal police of the judge's municipality are involved in the investigation or will testify or
 - (b) a municipal ordinance of the same municipality is involved?

It is the opinion of the Commission that a part-time municipal court judge may not practice before his own court. He may, however, represent criminal defendants in other courts in matters unrelated to matters coming before his court. However, he should refrain from representing a client in any matter concerning any municipal ordinance falling within the jurisdiction of the municipal court.

The first and third questions are governed primarily by Canons 3C and 5C of the Alabama Canons of Judicial Ethics. Canon 3C provides:

- (1) A judge should disqualify himself in a proceeding in which his disqualification is required by law or his impartiality might reasonably be questioned, including but not limited to instances where:

* * * *

- (b) He served as a lawyer in the matter in controversy ...

Canon 5C 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.

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- (3) A judge should manage his investments and other financial interests to minimize the number of cases in which he is disqualified.

Under these provisions, a part-time judge, who practices before his own court, automatically causes his own disqualification in all matters handled by him and all matters related thereto. He therefore violates Canon 5C(l) and (3) by failing to “minimize the number of cases in which he is disqualified.” It is our opinion that a part-time judge is therefore prohibited from practicing before his own court.

Under similar rationale, a part-time judge would be disqualified from sitting in any proceeding in which he must construe or apply a municipal ordinance whose construction is at issue in another proceeding in which he represents a party. Due to the fact that as an attorney he is taking the position of a proponent or opponent of the ordinance’s construction, his impartiality as a judge “might reasonably be questioned” when he is called upon as judge to apply the ordinance. Again, by accepting such cases as an attorney, the judge fails to “minimize the number of cases in which he is disqualified.”

Your second question has been addressed in advisory opinion 83-195 as follows:

It is the Commission’s opinion that the Alabama Canons of Judicial Ethics do not prohibit a part-time municipal judge from representing criminal defendants in the district or circuit courts of any county or in the appellate courts. This is true even if members of the police force of the municipality, where he is judge, testify as witnesses in the case. However, the municipal judge should not act as an attorney in any case involving a matter when it or a closely related matter has come before or is likely to come before his court.

The Commission hereby reaffirms that opinion.

Sincerely,

JUDICIAL INQUIRY COMMISSION