

Judicial Inquiry Commission

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November 9 ,1992

This is in response to your request for an advisory opinion from the Judicial Inquiry Commission.

A full-time municipal judge, or any other full-time judge, is prohibited from practicing law under the provision of Canon 5F, Alabama Canons of Judicial Ethics. See also Ala. Code 1975, § 34-3-11, § 34-3-14, Ala. Constitution of 1901, Art. VI, § 162 relating to judges of "courts of record". Your question is whether the research and writing of appellate briefs for another attorney in felony cases constitutes the unauthorized practice of law. You state that you would not be signing the briefs, would have no contact with the client, and would be assuming "a paralegal type duty." The Commission assumes that you will be financially compensated for your work.

"The activities of a paralegal do not constitute the practice of law as long as they are limited to work of a preparatory nature, such as legal research, investigation or the composition of legal documents which enable the licensed attorney-employer to carry a given matter to a conclusion through his own examination, approval or additional effort." Matter of Easler, 275 S.C. 400, 272 S.E.2d 32 (1980). The Comment to Rule 5.5, Alabama Rules of Professional Conduct states: "[A] lawyer [is not prohibited] from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work."

Although not specifically prohibited by the provisions of Canon 5F, it is the finding of this Commission that under the provisions of Canons 2, 2A, 2C, 3C(I), and 5, a full-time municipal judge may not research and prepare appellate briefs in criminal felony cases for another attorney for the following reasons.

First, Canon 2 provides that "[a] judge should avoid ... the appearance of impropriety in all his activities."

Canon 2A provides that "[a] judge should . . . conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Canon 2C states that a judge "should not lend the prestige of his office to advance the private interests of others."

"Any piece of legal or quasi-legal work is potentially the subject of litigation, thereby subjecting the judge's efforts to review, perhaps by her own court. Moreover, were judges to render even non-litigative services, the appearance would inevitably be created that their assistance was sought in order to exploit the judicial position.

Consequently, an abundance of caution is justified in order to maintain public confidence in the judiciary.”

J. Shaman, S. Lubet, James Alfini, Judicial Conduct And Ethics §7.22, at 193 (1990).

Second, under the provisions of Canon 3C(I), a judge must disqualify himself or herself when he or she has a business relationship with an attorney appearing before the court. Such a disqualification may not be remitted under Canon 3D. Therefore, you would have to recuse yourself in any case in your court in which your “attorney-employer” appears of counsel or in which he has an interest. Canon 5 provides that “[a] judge should regulate his extra-judicial activities to minimize the risk of conflict with his judicial duties.”

Third, and perhaps most significant, Canon 2C provides that a judge “should not convey or permit others to convey the impression that they are in a special position to influence him.” Considering the nature of the employer-employee and judge-lawyer relationships, the very fact that an attorney has hired a judge to act as his law clerk would certainly convey the impression that that attorney was in a special position to influence the judge. “A judge must avoid all impropriety and appearance of impropriety. He must expect to be the subject of constant public scrutiny. He must, therefore, accept restrictions on his conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.” Commentary to Canon 2, Alabama Canons of Judicial Ethics.

This opinion has been approved by the Judicial Inquiry Commission. Please feel free to contact me if you have any questions regarding this or any other matter.

Respectfully,