

## JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 01-772

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### COMPLETING CASES FROM FORMER LAW PRACTICE AFTER BECOMING A JUDGE

#### ISSUES

May a newly elected judge continue to act as an attorney in cases that are expected to be concluded within ninety days after he takes office? **Answer:** No.

#### FACTS

A recently elected district court judge had been acting as counsel in three estate cases that are expected to come to a full conclusion within ninety days after he takes office. Substantial costs for new counsel will be incurred by the estates if he withdraws from these cases and the files are sent to new counsel. The judge inquires whether, in fairness to the clients, heirs and their families, he may conclude these matters within a reasonable time after he takes office. His judicial duties do not include handling any probate matters.

#### DISCUSSION

Canon 5F states that “[a] judge should not practice law.” Although the Commission has not previously addressed the issue presented, it has previously advised a judge that continuing to act as a trustee of bankrupt estates would violate Canon 5F where the judge’s prior service as trustee was an incidence of his law practice prior to assuming the bench. Advisory Opinion 83-182.

“The practice of law by full-time judges has long been prohibited in every American

jurisdiction, whether or not it is conducted for compensation.” J. Shaman, S. Lubet, J. Alfini, *Judicial Conduct and Ethics*, §7.20, at page 238 (3rd ed. 2000). Professors Shaman, Lubet and Alfini write the following concerning winding up a law practice:

The process of winding-up a law practice creates its own difficulties. Newly named judges must terminate all representation, while at the same time safeguarding the interests of their (soon-to-be) former clients. . . . All appearances must be withdrawn or substituted, and arrangements must be made, with client consent, to transfer cases to successor counsel. Judges may not continue to represent or counsel clients after assuming the bench, although it has been suggested that “simple necessity has carved out an exception for judges to complete the cases they have begun.” In fact, there is no rule of completion. At most, judges have been allowed to provide incidental information to successor counsel; that is, judges may safeguard former clients by informing new counsel of past events or by clarifying files, but they may not render advice as to the future conduct of the representation.

*Id.*, §7.22, at pages 242-243 (footnotes omitted).

The Commission has been unable to find any jurisdiction that allows winding up pending cases as an exception to the prohibition against engaging in the practice of law. In *In re Piper*, 271 Ore. 726, 534 P.2d 159 (1975),

a judge was reprimanded for continuing to work on four decedents' estates and a guardianship despite the judge's personal conclusion that it was not improper to finish up routine office work that did not require a court appearance.

In the opinion of the Commission, continuing to act as an attorney in cases that are expected to be concluded within ninety days after a judge takes office would constitute a violation of Canon 5F.

The Commission also notes that the Alabama constitution contains the following provision: "No judge of any court of this state shall, during his continuance in office, engage in the practice of law . . ." ALA. CONST. amend. 328, §6.08(a). The Commission is not authorized to give advisory opinions concerning the application of constitutional or statutory law; its opinion authority extends only to application of the Alabama Canons of Judicial Ethics. Therefore, it cannot provide an opinion as to whether the proposed conduct would be in violation of amendment 328, §6.08(a). However, it observes that a violation of the state constitution would also constitute a violation of Canon 2A, which requires a judge to respect and comply with the law.

## REFERENCES

Alabama Advisory Opinion 83-182.

Alabama Canons of Judicial Ethics, Canons 2A and 5F.

ALA. CONST. amend. 328, §6.08(a).

*In re Piper*, 271 Ore. 726, 534 P.2d 159 (1975).

J. Shaman, S. Lubet, J. Alfini, *Judicial Conduct and Ethics*, §§7.20 and 7.22 (3rd ed. 2000).

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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 17 of the Rules of Procedure of the Judicial Inquiry Commission. For further information, you may contact the Judicial Inquiry Commission, 800 South McDonough Street, Suite 201, Montgomery, Alabama 36104; tel.: (334) 242-4089; fax: (334) 240-3327; E-mail: [jic@alalinc.net](mailto:jic@alalinc.net).