

JUDICIAL INQUIRY COMMISSION

DATE ISSUED: JULY 13, 2001

ADVISORY OPINION 01-784

APPEARING AS COUNSEL IN A COURT
IN WHICH SERVES AS A PART-TIME OR
PRO TEMPORE JUDGE

ISSUES

May a practicing attorney who, along with two others, serves as municipal judge on appointment by the mayor when the full-time municipal judge is absent or disqualified continue to represent clients in the municipal court? **Answer:** Since the attorney serves as a judge pro tempore, he may continue to represent clients in the municipal court.

FACTS

A practicing attorney has been serving from time to time as a judge in a municipal court on appointment of the mayor when the full-time municipal judge recuses herself or is absent. Two other practicing attorneys are also called upon by the mayor to fill in from time to time when the full-time judge is absent or disqualified. Sometimes they serve only to preside over a single case. On other occasions, they preside for half a day or a full day. The inquiring judge expects to act as a municipal judge several times a year. He sometimes represents clients in the municipal court, on days other than when he is sitting as the judge. He asks whether he must discontinue representing clients in the municipal court if he continues to serve as a judge in that court.

DISCUSSION

In Advisory Opinion 90-408, the Commission concluded that a part-time substitute municipal judge was prohibited by the Alabama Canons of Judicial Ethics from

representing clients in the court over which he occasionally presided subject to call from the mayor. As the Commission has since observed, this opinion was based upon Canons 5C(1) and (3) in that, by agreeing to be available to serve as a judge whenever called, the substitute judge had agreed to comply with the canon provision requiring a judge to “minimize the number of cases in which his disqualification is required,” but that, by practicing before the municipal court, the judge caused his own disqualification in all matters handled by him and all matters relating thereto. The Commission decided that the “on-call” substitute judge was a “part-time” judge and, thus, subject to Canon 5C(3). Advisory Opinions 95-568, 95-572, and 95-573.

The canons make a distinction between “part-time” judges and judges “pro tempore.” A “part-time judge” serves on a continuing basis. A “judge pro tempore” is a person who is appointed to act temporarily as a judge. While acting as a judge, a judge pro tempore is not required to comply with Canon 5C(3).

A judge pro tempore must comply with Canons 1, 2, 3, 4, 5A, 5B, 5C(1), 5C(2), 5C(4) - (6), 6A, 6B, and 7. Compliance with the Canons of Judicial Ethics, §B. The Compliance provision also states that a person who has been a judge pro tempore should not act as a lawyer in a proceeding in which he has served as a judge or in any other proceeding related thereto. Compliance with the applicable canons may require an attorney to not accept an appointment to preside as a judge pro tempore over certain cases, but the canons do not create a blanket prohibition on such a judge practicing law in the municipal court.

The service as a judge in the situation presented appears to be so sporadic as to constitute service as a judge pro tempore. Accordingly, it is the opinion of the Commission that the inquiring judge may continue to represent clients in the municipal court.

REFERENCES

Alabama Advisory Opinions 90-408, 95-568, 95-572, and 95-573.

Alabama Canons of Judicial Ethics, Canons 5C(1) and 5C(3), and Compliance with the Canons of Judicial Ethics, § B.

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.