

**JUDICIAL ETHICS COMMITTEE  
ADVISORY OPINION NO. 00-03**

This Committee has been requested to issue an opinion addressing the propriety of judicial conduct of a part-time juvenile court judge arising from the following factual scenarios:

I. An attorney represents a client in a criminal case. Subsequently, the client is accused of the sexual molestation of a child in the custody of the Tennessee Department of Children's Services. The same attorney who represented the client in the criminal case may now be acting as the judge in the Juvenile Court hearing the sexual molestation case.

II. An attorney represents parents in a termination of parental rights case in a county adjacent to Sequatchie. Within the week, the attorney, acting as Juvenile Court Judge in Sequatchie County, hears a termination of parental rights case involving basically the same issues.

III. A litigant before a part-time judge/lawyer later attempts to retain that judge/lawyer to represent him in other pending matters.

**General Ethical Principles Applicable to Part-Time Judges**

Although a part-time judge is exempt from Canon 4(G) (a judge shall not practice law), the simultaneous practice of the law and presiding as a judge presents unique disqualification issues not faced by a full-time judge. See generally Canon 5, *Application of the Code of Judicial Conduct*, (C)(1). The general rule is

A continuing part-time judge . . . shall not practice law in the court on which the judge serves or in any court subject to the appellate jurisdiction of the court on which the judge serves, and shall not act as a lawyer in a proceeding in which the judge has served as judge or in any other proceeding related thereto.

Canon 5, *Application of the Code of Judicial Conduct*, (C)(3). Additionally, part-time

judges “shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” Canon 2(A). A part-time judge “shall not lend the prestige of judicial office to advance the private interests of the judge.” Canon 2(B). Moreover, a part-time judge is subject to the same rules requiring disqualification as a full-time judge. See generally Canon 3(E). Thus, the activities of a part-time judge/lawyer must be examined on a case-by-case basis utilizing the applicable Canons of Judicial Conduct.<sup>1</sup>

### **Committee Response to Scenario I**

\_\_\_\_\_ We interpret this scenario to involve the broad question of whether a part-time judge/lawyer’s representation of a client requires disqualification of the judge in a pending matter before the court in which the client is a party. This answer is dependant upon whether the client is a current or former client of the judge/lawyer.

If the client is a current client, a part-time judge/lawyer may not preside over a

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<sup>1</sup> See, e.g., Judicial Ethics Committee Opinion, 95-2 (part-time General Sessions judge may maintain law practice in other courts involving civil and criminal litigation as long as the integrity and the impartiality of the judiciary is not compromised, private interests of others are not improperly and unethically advanced and the judge is not acting as an attorney in a proceeding in which he has previously served as a judge or in any other proceeding related thereto); Judicial Ethics Committee Opinion, 93-3 (part-time judicial commissioner should not practice criminal law in General Sessions Court under which he serves, may appear as a lawyer in other courts in criminal cases provided it does not relate to a proceeding in which he has served in a judicial capacity, and may appear in civil cases in General Sessions Court under which he serves or in any other court); Judicial Ethics Committee Opinion, 92-3 (part-time judge should not represent a debtor in a bankruptcy after rendering a judgment against the debtor); Judicial Ethics Committee Opinion, 92-5 (part-time judge with probate jurisdiction may serve as executor of an estate); Judicial Ethics Committee Opinion, 91-9 (part-time General Sessions judge with probate and domestic relations jurisdiction may accept employment as a lawyer in these areas in other courts, provided the employment does not relate to the proceeding over which the judge presided); Judicial Ethics Committee Opinion, 91-3 (part-time General Sessions judge may serve as trustee under deeds of trust); Judicial Ethics Committee Opinion, 90-3 (part-time General Sessions judge may not hear cases in which one of the litigants is a regular or frequent client of the judge; a part-time General Sessions judge may not hear cases where one of the litigants has the judge on retainer).

case in which the client is a party. See, e.g., *Alabama Advisory Opinion*, 97-631; *New York Advisory Opinion*, 95-5; *Pennsylvania Advisory Opinion*, 12; *Texas Advisory Opinion* 173.

It is axiomatic that an attorney is an advocate, whose primary duty is to advance and protect his client's interests. In contrast, a judge's primary duty is to serve as a neutral and disinterested referee and to render a fair and impartial ruling. For a judge in an active and ongoing attorney-client relationship to preside over and decide a case involving his client brings these two duties into irreconcilable conflict.

Public Reprimand of Bronson, (Texas State Commission on Judicial Conduct January 19, 1995).

Disqualification may also be required if the client is a former client. In determining whether a part-time judge may hear a matter in which a former client is now a party, a part-time judge should consider (1) the extent to which the prior representation might in some limited way be related to the current case; (2) the length of time between the prior representation and the appearance of the former client before the judge; and (3) the nature of the prior representation. See generally In the Matter of Edwards, 694 N.E.2d 701 (Ind. 1998); *New York Advisory Opinion*, 88-17(c) and 88-48.

Whether the nature of the prior representation requires disqualification depends on factors such as: (1) the number of times the judge represented the former client; (2) the amount of work the judge performed for the client; (3) the amount of the fee; (4) whether the representation was routine or technical or involved the morality of the client's conduct; (5) the duration of the attorney-client relationship; (6) whether there is

a social relationship between the judge and the former client; and (7) whether special circumstances create a likely appearance of impropriety. See Edwards, 694 N.E.2d at 701.

### **Committee Response to Scenario II**

\_\_\_\_\_ In scenario II, we are asked whether a part-time juvenile court judge may represent parents in a termination of parental rights case in an adjoining county as he routinely hears termination of parental rights cases involving the same issues. A previous opinion of this Committee states that, provided the employment does not relate to proceedings over which the judge will preside, there is no *per se* ethical impropriety in a part-time judge accepting employment in other courts regarding legal matters over which he has subject matter jurisdiction. See Judicial Ethics Committee Opinion, 95-2 (citing Judicial Ethics Committee Opinion, 91-9). Therefore, a part-time juvenile court judge may represent a client in another county in matters that routinely come before the court so long as other ethical obligations are not compromised.

### **Committee Response to Scenario III**

Finally, we are asked to determine the propriety of a part-time judge/lawyer accepting employment by a party who has appeared before him in court. Again, the answer to this inquiry is subject to certain factual considerations. First, however, we remind part-time judges that, like full-time judges, they are prohibited from engaging in financial or business dealings that may reasonably be perceived to exploit the judge's judicial position. See Canon 4(D)(1)(a). Again, the part-time judge must be

scrupulously careful to avoid conduct in his law practice where he utilizes or seems to utilize his judicial position to further his professional success. See In the Matter of Friday, 208 S.E.2d 535 (S.C. 1974). If the acceptance of the employment would not amount to an abuse of the prestige of the judicial office, the part-time judge may accept employment if the representation would not otherwise be prohibited. In determining whether acceptance of employment is appropriate, a part-time judge should consider:

1. *Did I serve as a judge in this proceeding?*: A judge may not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.

2. *Did I serve as judge in a related proceeding?*

A. *Are the parties and witnesses the same as in a proceeding in which I served as a judge?* If yes, part-time judge may not accept representation.

B. *Are the underlying events or many of the facts the same as in a proceeding in which I served as a judge?* If yes, part-time judge may not accept representation.

C. *Are issues involved in a proceeding in which I served as a judge likely to be of significance in the matter?* If yes, part-time judge may not accept representation.

3. *Will taking the case require me to practice law in the court on which I serve?* If yes, then part-time judge must decline representation.

For guidance on similar issues, the Committee recommends that part-time judges consult An Ethics Guide for Part-Time Lawyer Judges, *American Judicature Society* (1999).

FOR THE COMMITTEE:

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DAVID G. HAYES, Judge

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CONCUR:  
FRIERSON  
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