

**JUDICIAL ETHICS COMMITTEE**

**OPINION NO. \_\_\_\_\_**

Inquiry has been submitted to the Committee for issuance of an opinion of whether a part-time General Sessions Judge with Probate jurisdiction may preside over the routine and uncontested probate of wills he has prepared. The judge writes:

I have been taking the following approach: I continue to act as Probate judge for wills I have prepared, witnessed or affidavit notarized, unless the will is formally contested or challenged in any way (i.e., facially, its execution, undue influence, capacity, etc.). If a will is contested in any manner, and I have any connection whatsoever to the will (as preparer, by consultation, as will witness, affidavit notarization, etc.), then I immediately recuse myself.

I have encountered no problems with this approach and have never encountered a complaint, and have often discussed this situation with many part-time and full-time judges whose consensus is that this approach is ethically proper; however, I would like to have the Courts opinion and guidance on this matter. Is my approach described above ethical and proper?

It is the opinion of the Committee that the actions taken by the part-time judge are consistent with the code of judicial ethics. Disqualification is addressed by Canon 3 E of the Code of Judicial Conduct. Throughout this provision emphasis is repeatedly placed on “disputed” or “controversy” as relates to the proceeding before the judge. When the probate of the will is entirely routine, without dispute, and without controversy the Committee believes that recusal is unnecessary with one exception.

The Committee believes that it would be improper for the judge to sit on a case in which he had signed the witness affidavit (T.C.A. 32-2-110). The sworn statement allowable by T.C.A. 32-2-110 is accepted by the Court in place of the testimony of a witness. Although the probate of a will may be routine, the Committee believes that it would create an appearance of impropriety where the same individual was both the judge and in effect a witness even though the matter was uncontested. cf. T.R.E. 605

**FOR THE COMMITTEE:**

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**WALTER C. KURTZ, JUDGE**

CONCUR:

