

1980 WL 121250 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

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Dear Mr. Rawl:

In a letter to this office you requested an opinion 'regarding the impact of a magistrate's involvement in a private law practice or other business upon his or her classification as a full time magistrate.'

As to your question, there are no state statutory or constitutional provisions specifically prohibiting a magistrate from engaging in a private law practice or other profession. However, certain provisions of the Code of Judicial Conduct, adopted as Rule 33 of the Rules of the Supreme Court of South Carolina, which address the matter of judicial conduct, are relevant. Canon 5C of the Code states as to financial activities:

(1) A judge should refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, exploit his judicial position, or involve him in frequent transactions with lawyers or persons likely to come before the court on which he serves.

(2) Subject to the requirements of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity, but should not serve as an officer, director, manager, advisor, or employee of any business.

As to a judge engaged in a family business at the time the Code of Judicial Conduct became effective, a provision of the Code, which is included in a paragraph entitled 'Effective Date of Compliance,' qualifies subsection (2) and states that '. . . if . . . the demands on his time and the possibility of conflicts of interest are not substantial . . .' such a judge may '. . . continue to act as an officer, director, or non-legal advisor of a family business.' Concerning the propriety of a judge engaging in the practice of law, Section F of Canon 5 of the Code states, 'a judge should not practice law.'

As to any question of whether a magistrate's activities are governed by the Code of Judicial Conduct, it is stated under a paragraph of the Code entitled 'Compliance with the Code of Judicial Conduct' that:

' . . . (a)nyone, whether or not a lawyer, who is an officer of a judicial system performing judicial functions, including an officer such as a referee in bankruptcy, special master, court commissioner, or magistrate, is a judge for the purpose of this Code.' (Emphasis added.)

However, there is a further provision limiting the applicability of such Code. Included in the same above-referenced paragraph is the statement that all judges should comply with the Code with the exception that a part-time judge is not required to comply with the above-referenced Canons 5C(2) and 5F. For the purposes of the Code, a part-time judge is defined as:

' . . . a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge.'

*2 Referencing the above discussion, it is apparent that as to your question, a full-time magistrate may not engage in the practice of law or be involved or engaged in a business as prohibited by Canon 5C(2). Obviously a determination must be made as to whether a particular magistrate may be considered full-time or part-time. Reference to the following may be of some assistance:

'If all of the following questions are answered in the affirmative, a judge is a part-time judge:

1. Does he serve on a continuing or periodic basis? For example, if a judge serves one-half of each working day, or if he serves every Monday, the answer is 'Yes.'

2. Is he permitted by law to devote time to some other profession or occupation? The answer to this question will be found in the statutes or the common law of the jurisdiction in which he serves.

3. Is the judge's compensation less than that of a full-time judge at the same jurisdictional level? If a judge is paid on a full-time basis but works only part-time because the docket in his court is up to date, he is a full-time judge within the meaning of this Code.' Thode, Reporter's Notes to Code of Judicial Conduct (1973), p. 101.

While a part-time judge may practice law or engage in such business activity as referenced by Canon 5C(2), consideration should be given to the fact that even part-time judges are subject to the provisions of Canon 5C(1). Such section states in part: 'A judge should refrain from financial and business dealings that . . . involve him in frequent transactions with lawyers or persons likely to come before the court on which he serves.'

While such provision is obviously restrictive as to part-time magistrates engaged in business, it may be considered as equally restrictive on part-time magistrates who maintain a private law practice. (See, e.g., Informal Opinion 1294, American Bar Association Committee on Ethics and Professional Responsibility, (June 17, 1974) (attached).

Hopefully, the above discussion is in answer to your request. I recognize that some decision still must be made as to whether a particular magistrate is considered full-time or part-time. I can only suggest that such decision is more properly a matter for you and the County Council to resolve. If there is anything further, please contact me.

Sincerely,

Charles H. Richardson
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