

May 11, 2005

Mr. Kenneth B. Baim
Attorney at Law
Baim, Gunti, Mouser & Havner, PLC
P.O. Box 5100
Pine Bluff, AR 71601

RE: Advisory Opinion 2005-02

Dear Mr. Baim:

You have advised the Committee of the possibility of your appointment to the position of Circuit Judge for a term ending on January 1, 2007. At present you are a practicing attorney and upon completion of your appointment you would return to practice with your present law firm.

You have certain financial arrangements with your office that necessitate your continuing to be obligated on long-term notes which would require you to periodically renew the notes on behalf of the law firm during your tenure as circuit judge. Further, you have in progress in your firm a major case that will result in substantial fees in 2005 and 2006 being received by yourself, even though you will not be working on this case once you assume the bench.

You also have extensive business interests which you would continue to run out of your present law office employing personally your legal secretary to help conduct that business.

Selling your interest in the law office is not feasible for various financial reasons. You are prepared, however, to transfer your interest in the firm to a blind trust administered by your senior partners who would have the sole responsibility of running the office. You advise us that you would not participate as judge on any case involving your law firm once you assume the bench.

Your question to this committee is whether, under the above circumstances, a conflict of interest would exist if you accepted the appointment of circuit judge.

We refer you to our Opinion #96-09 rendered February 19, 1997, for a comprehensive discussion of the subject of acceptance of fees once you leave a firm to assume a judicial office. Basically, Canon 4 G prohibits you practicing law and Canon 2 prohibits any appearance of impropriety that would

include the acceptance of fees, other than what you earned while with the firm, once you assume the bench.

The other interests retained with your law firm, should you be appointed, would clearly run contra to Canon 2 A and B and Canon 4 A and D in that there would be a strong appearance of impropriety and a risk of conflict with your judicial obligations. The maintaining of ties with the firm in the form of a financial relationship and the maintaining of an office at the firm for your own personal business would not be permissible.

This committee finds, under the facts you have stated, that you cannot accept the appointment.

Sincerely,

David B. Bogard
For the Committee