

January 18, 2005

The Honorable Barbara A. Griffin
Jackson County District Judge
315 Arrington Street
Newport, Arkansas 72112

Re: Advisory Opinion No. 2004-07

Dear Judge Griffin:

You have advised us in your letter of December 20, 2004 that you are the newly elected District Judge for Jackson County and that you take office in January, 2005. You stated that you are the Managing Attorney for Legal Aid of Arkansas' Newport Office. You stated in your letter, "I am requesting an advisory opinion as to whether my continued employment with Legal Aid of Arkansas, after taking the bench in January, 2005, will present a conflict of interest with regards to clients that I represented in Circuit and/or Federal Court on completely different and non-related matters than would come before me as District Court Judge? I would also like to know if said employment would be a conflict with regards to the Staff Attorney in my office, since we would likely be considered attorneys within the same firm."

Frankly, we cannot answer either of your questions as framed. As to the first question, we cannot answer conflict of interest questions except with regard to a specific fact situation that involved prospective conduct. We are not sure exactly what you meant by your second question. We will endeavor to frame some questions ourselves:

- < "Does my continued employment with Legal Aid of Arkansas constitute a violation of the Code of Judicial Conduct?"
- < "Would it violate the Code of Judicial Conduct for the Staff Attorney in the Legal Aid office to appear before me in District Court?"

We do not consider that your employment with Legal Aid of Arkansas would in itself constitute a violation of the Code of Judicial Conduct. We could counsel, however that you should be constantly aware of the potential for conflicts of interests or the appearance of impropriety. This is, unfortunately, an area fraught with peril and will require your utmost vigilance. Canon 4 G of the Code prohibits the practice of law by judges. The only reason that

you can engage in the practice of law while serving as District Judge is that this office is classified as a “continuing part-time judge” under the Code section as follows:

“B. Continuing Part-time Judge. A continuing part-time judge:

(1) is not required to comply:

(a) except while serving as a judge, with Section 3B(9); and

(b) at any time with Sections 4C(2), 4D(3), 4E(1), 4F, 4G, 4H, 5A(1), 5B(2) and 5D.

(2) 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 a judge or in any other proceeding related thereto.”

Even though you are afforded this exemption you must be aware that “an individual who accepts the position of a continuing part-time judge places the judicial office first in service and priority and certain restrictions must follow.” See Arkansas Advisory Opinion 98-02. Your practice of law should be as far removed as possible from the court. See Arkansas Advisory Opinion 97-04.

In response to the second question we phrased, we can advise you that the appearance of any employee of the Legal Aid office should cause your disqualification under Canon 3 E (1) because your impartiality might reasonably be questioned. Also Canon 2 calls for a judge to avoid impropriety and the appearance of impropriety in all of the judge’s activities. We consider your analogy of the Legal Aid office to a law firm to be a good one. Employees of the Legal Aid office should 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. See B. Continuing part-time judges (2). In addition to potential disqualification created by employees of the Legal Aid Office, you should also be cognizant of similar issues arising from clients, funding sources and other interests of the Legal Aid Office.

Being a continuing part-time judge places a great burden on the holder of that office; a burden that is not shared by full time judges and this requires a great deal of diligence and sensitivity to the issues covered by the Code of Judicial Conduct. You might consider reading [An Ethics Guide for Part-time Lawyer Judges](#) by Cynthia Gray and Nancy Biro published in 1999 by the American Judicature Society. It is available for purchase on the Society’s website.

We wish you the very best as you take on this most important duty as District Court Judge.

Very truly yours,

Edwin B. Alderson
For the Committee