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FORMAL ADVISORY OPINION #01-98
MARCH 9, 1998

QUESTION PRESENTED

Does Formal Advisory Opinion #03-96 (October 30, 1996), which advises that per diem district judges and the lawyers in their firms cannot practice as lawyers in district courts within the circuit in which the per diem judge sits, apply to a lawyer who is "of counsel" to the law firm?

CONCLUSION

Formal Advisory Opinion #03-96 applies to "of counsel" lawyers as it does to partners, associates, and part-time attorneys affiliated with the law firm of the per diem judge.

DISCUSSION

On October 30, 1996, this Commission issued Formal Advisory Opinion #03-96 advising that lawyers in the law firm of a per diem judge cannot practice in the district courts within the circuit in which the per diem judge sits. Subsequently, the Revised Code of Judicial Conduct was amended to provide that district courts and district family courts are separate for purposes of this limitation. See Revised Code of Judicial Conduct, Application of the Code of Judicial Conduct D. (Amended effective December 30, 1996). This amendment makes one specific exception from disqualification for part-time judges assigned to preside solely in district courts, permitting them to practice before the district family courts and vice versa. The general limitation set forth in Formal Advisory Opinion #03-96, as qualified by this recent amendment, still applies.

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This limitation is based in part upon the need to avoid an appearance of impropriety caused by an observer or party questioning whether the lawyer's association with the part-time judge fosters special influence or advantage. Canon 2B, which provides that a judge shall not permit others to convey the impression that they are in a special position to influence the judge, is violated by such a perception.

The rationale underlying Formal Advisory Opinion #03-96 applies equally to all lawyers affiliated with the law firm of the part-time judge, whether the lawyer is a partner, associate, or "of counsel," regardless of what the actual arrangement is between the lawyer and the law firm. For this reason, the Commission concludes that Formal Advisory Opinion #03-96, applies equally to all lawyers who are held out to the public to be affiliated with the law firm as a partner, associate, part-time lawyer, or one who is "of counsel."



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