



Supreme Court — Commission on Judicial Conduct — THE JUDICIARY • STATE OF HAWAII
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FORMAL ADVISORY OPINION #09-95
JANUARY 24, 1996

QUESTION PRESENTED

May a District Family Court per diem judge practice law in the divorce area if the per diem judge's Family Court assignments are limited to non-divorce matters?

DISCUSSION

The right of per diem judges to practice law is clearly established by statute. Hawaii Revised Statutes §604-2; In The Matter of the Application of David S. Ferguson, 74 Haw. 394 (1993). However, that right is limited by the Revised Code of Judicial Conduct which provides under "Application of the Code of Judicial Conduct, Section B":

Continuing part-time judge. A continuing part-time judge...shall not practice law in the court on which the judge serves.

Per diem judges are part-time judges, as referred to in the Revised Code of Judicial Conduct. See Revised Code of Judicial Conduct, page i (Terminology); Informal Advisory Opinion #07-93 (3/31/94). The use of the term "shall" is intended to be mandatory. See Revised Code of Judicial Conduct, p. 2 (Preamble); Town v. Land Use Commission, 55 Haw. 538 (1974). As such, the Revised Code of Judicial Conduct prohibits a per diem Family Court judge from practicing divorce law in the District Family Court even if the judge's per diem assignments in that court are restricted to non-divorce matters.

FOR THE COMMISSION ON
JUDICIAL CONDUCT


GERALD Y. SEKIYA, CHAIR