

ADVISORY COMMITTEE  
ON STANDARDS OF JUDICIAL CONDUCT

OPINION NO. 1 - 2019

RE: Propriety of a part-time probate judge continuing his or her practice of law.

FACTS

The probate judge for a county is considering hiring a part-time probate judge. The inquiring judge seeks an opinion as to whether the person selected as part-time judge can continue his or her practice of law in probate, circuit and/or appellate courts, and if so, what limitations apply.

CONCLUSION

A part-time probate judge can continue his or her practice of law, provided that the judge complies with the limitations set forth in the Code of Judicial Conduct.

OPINION

A continuing part-time judge is not required to comply with Canon 4G that prohibits a judge from practicing law. Rule 501, Application C(1)(b), SCACR. A part-time judge may practice law, subject to several limitations under the Code of Judicial Conduct. “A continuing part-time judge 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.” Rule 501, Application C(2), SCACR. Canon 2 mandates that judges avoid the appearance of impropriety in their activities and conduct themselves “in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” Rule 501, SCACR.

In a previous decision, Op. 6-2013, we considered whether a part-time probate judge could continue practicing probate law. We concluded that a part-time **probate** judge could

continue to practice **probate** law, provided that he or she not do so in the County in which he or she would also preside as probate judge. However, the inquiring judge here has also presented the question of whether a part-time probate judge may practice in circuit and/or appellate courts, which was not addressed by Op. 6-2013.

The Code of Judicial Conduct prohibits a part-time judge from practicing “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.” Rule 501, Application C(2), SCACR. In other words, a part-time judge cannot: 1) practice law in the court in which or he or she serves (though the judge may practice law in the same type of court in another county); or 2) practice law in a court whose decisions will be appealed to the court in which the judge serves. The probate court has no appellate jurisdiction of any other court. In contrast, circuit courts have appellate jurisdiction for certain matters initiated in municipal or magistrate court. The Court of Appeals and Supreme Court have appellate jurisdiction of decisions issued by, *inter alia*, circuit courts, probate courts, and administrative law courts. Section C(2) does not prohibit a part-time probate judge’s practice of law in courts to which a probate decision may be appealed (i.e., circuit court and/or appellate courts); the prohibition applies only to the practice of law in courts whose decisions would be appealed to the probate court. Since the probate courts have no appellate jurisdiction, the only bar to a part-time probate judge’s practice of law is that he or she may not practice law in probate court in the county in which he or she serves as judge.

S/ LETITIA H. VERDIN  
LETITIA H. VERDIN, CHAIR

S/ USHA JEFFERIES BRIDGES  
USHA JEFFERIES BRIDGES

S/ KEITH M. BABCOCK  
KEITH M. BABCOCK

December 31, 2018.