

JUDICIAL ETHICS COMMITTEE
Advisory Opinion 09-2
Issued August 19, 2009

Issue

May a sitting Probate Judge act as an expert witness?

Statement of Facts

A sitting Probate Judge has received an inquiry asking if he would serve as an expert witness on behalf of an attorney who has been accused of malpractice in the drafting of a will.

Applicable Provisions

Canon 1 A JUDGE SHALL UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY

Canon 2 A JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL OF THE JUDGE'S ACTIVITIES

B. Preventing improper influence. . . . A judge shall not lend the prestige of judicial office to advance the private interests of a judge or others . . . A judge shall not testify voluntarily as a character witness.

Canon 4 A JUDGE SHALL SO CONDUCT THE JUDGE'S EXTRA-JUDICIAL ACTIVITIES AS TO MINIMIZE THE RISK OF CONFLICT WITH JUDICIAL OBLIGATIONS

A. Extra judicial activities in general -- A judge shall conduct all of the judge's extra judicial activities so that they do not:

(2) demean the judicial office.

Discussion

Appearance of impropriety which judges are commanded to avoid as much as actual impropriety can be defined as follows: "An appearance of impropriety occurs when reasonable minds with knowledge of all the relevant circumstances disclosed by a reasonable inquiry would conclude that the judge's honesty, integrity, impartiality, temperament or fitness to serve as a judge is impaired."

While we appreciate that our probate judges are not full-time judges and that they are permitted to practice law with certain limitations, given the statement of facts and the present Code of Judicial Conduct, we firmly believe it would be inappropriate for the Probate Judge to honor the request made of him to be an expert witness.

In our society, a part-time judge is a full-time judge in the eyes of the public. By taking on the duties of a part-time judge, a judge must forego certain requests for his services.

Conclusion

For the reasons stated above, we are of the opinion that the Probate Judge should decline the requested expert representation.