



STATE OF ALABAMA ETHICS COMMISSION



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February 6, 2008

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ADVISORY OPINION NO. 2008-01

William T. Johnson, III, Esq.
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Birmingham, Alabama 35203

Conflict of Interest/Law Firm Paying Referral Fee To Attorney Employed As A Judicial Assistant/Bailiff/Law Clerk In The Civil Division Of The Circuit Court Of Jefferson County, Alabama

A law firm may pay a referral fee to an attorney who works as a judicial assistant/bailiff/law clerk in the civil division of the Circuit Court of Jefferson County, Alabama, and also maintains a private law practice; provided, that the matter is not related to the attorney's service with the circuit court; that the matter is neither pending, nor arose in the court employing the attorney/judicial assistant; and, where the matter came to the attorney/judicial assistant's attention outside his capacity as a judicial assistant.

As the question involves issues beyond the scope of the Alabama Ethics Law, it is suggested that the requestor of this opinion contact the Administrative Office of Courts regarding any internal rules and regulations, as well as the Alabama State Bar Association regarding the applicability of the *Rules of Professional Responsibility* and/or any licensing matters.

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Dear Mr. Johnson:

The Alabama Ethics Commission is in receipt of your request for an Advisory Opinion of this Commission, and this opinion is issued pursuant to that request.

QUESTION PRESENTED

May a law firm in Jefferson County, Alabama, pay a referral fee in a personal injury case to an attorney, who is also employed as a judicial assistant/bailiff/law clerk in the civil division of the Jefferson County Circuit Court?

FACTS AND ANALYSIS

The facts as have been presented to this Commission are as follows:

William T. Johnson, III, is an attorney with the firm of Pittman, Dutton, Kirby & Hellums, PC, a law firm located in Birmingham, Alabama. A lawyer referred a personal injury case, the *Doe* matter, to his firm. This lawyer works as a judicial assistant, bailiff and law clerk for a circuit judge in the civil division of the Circuit Court of Jefferson County, Alabama. The lawyer also maintains a private law practice. He practices mainly in municipal court in the evenings, and also accepts numerous *guardian ad litem* appointments.

The judge, Judge A, for whom the referring lawyer works, is a judge before whom Mr. Johnson's firm has several pending cases. However, the *Doe* matter was pending before a different judge in the same county and court. Judge A did not preside over the *Doe* case.

The *Doe* case originally came to the attention of the referring lawyer through his personal relationship with the client. It did not come to the referring lawyer's attention by way of his service as a judicial assistant.

The *Doe* case has been settled. The referring lawyer is due to receive a referral fee, and Mr. Johnson asks whether or not this scenario would be prohibited under the Alabama Ethics Law.

Mr. Johnson states he has already contacted the Alabama State Bar and has been informed that none of the Alabama Rules of Professional Conduct would prohibit either his firm's payment of the fee or the referring lawyer's acceptance of the fee. They were referred to the Ethics Commission by the Office of General Counsel at the Alabama State Bar.

The Alabama Ethics Law, Code of Alabama, 1975, Section 36-25-1(23) defines a public employee as:

“(23) PUBLIC EMPLOYEE. Any person employed at the state, county, or municipal level of government or their instrumentalities, including governmental corporations and authorities, but excluding employees of hospitals or other health care corporations including contract employees of those hospitals or other health care corporations, who is paid in whole or in part from state, county or municipal funds. For purposes of this chapter, a public employee does not include a person employed on a part-time basis whose employment is limited to providing professional services other than lobbying, the compensation for which constitutes less than 50 percent of the part-time employee's income.”

Section 36-25-1(8) defines a conflict of interest as:

“(8) CONFLICT OF INTEREST. A conflict on the part of a public official or public employee between his or her private interests and the official responsibilities inherent in an office of public trust. A conflict of interest involves any action, inaction, or decision by a public official or public employee in the discharge of his or her official duties which would materially affect his or her financial interest or those of his or her family members or any business with which the person is associated in a manner different from the manner it affects the other members of the class to which he or she belongs.”

Section 36-25-5(a) states:

“(a) No public official or public employee shall use or cause to be used his or her official position or office to obtain personal gain for himself or herself, or family member of the public employee or family member of the public official, or any business with which the person is associated unless the use and gain are otherwise specifically authorized by law. Personal gain is achieved when the public official, public employee, or a family member thereof receives, obtains, exerts control over, or otherwise converts to personal use the object constituting such personal gain.”

Section 36-25-5(c) states:

“(c) No public official or public employee shall use or cause to be used equipment, facilities, time, materials, human labor, or other public property under his or her discretion or control for the private benefit or business benefit of the

public official, public employee, any other person, or principal campaign committee as defined in Section 17-22A-2, which would materially affect his or her financial interest, except as otherwise provided by law or as provided pursuant to a lawful employment agreement regulated by agency policy.”

Section 36-25-8 states:

“No public official, public employee, former public official or former public employee, for a period consistent with the statute of limitations as contained in this chapter, shall use or disclose confidential information gained in the course of or by reason of his or her position or employment in any way that could result in financial gain other than his or her regular salary as such public official or public employee for himself or herself, a family member of the public employee or family member of the public official, or for any other person or business.”

Section 36-25-2(b) in pertinent part states:

“(b) An essential principle underlying the staffing of our governmental structure is that its public officials and public employees should not be denied the opportunity, available to all other citizens, to acquire and retain private economic and other interests, except where conflicts with the responsibility of public officials and public employees to the public cannot be avoided.”

While the Ethics Law allows public officials and public employees to have outside financial and other business interests, those activities are prohibited if a conflict of interest exists between the individual’s public service and his or her private interests.

In the scenario before the Commission, the attorney/judicial assistant would be prohibited from accepting the referral fee, if the matter had arisen in the course of, or by virtue of his service in the public sector as an employee of the Jefferson County Circuit Court. Likewise, he would be prohibited from participating in the matter, had the *Doe* case been pending in the court by which he is employed.

Under the facts as presented, the matter came to the attorney/judicial assistant’s attention by virtue of a personal relationship with the injured party, and was in no way related to his service as a judicial assistant.

Based on the facts as provided and the above law, a law firm may pay a referral fee to an attorney who works as a judicial assistant/bailiff/law clerk in the civil division of the Circuit Court of Jefferson County, Alabama, and also maintains a private law practice; provided, that the matter is not related to the attorney’s service with the circuit court; that the matter is neither

pending, nor arose in the court employing the attorney/judicial assistant; and, where the matter came to the attorney/judicial assistant's attention outside his capacity as a judicial assistant.

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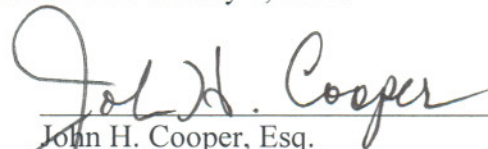
CONCLUSION

A law firm may pay a referral fee to an attorney who works as a judicial assistant/bailiff/law clerk in the civil division of the Circuit Court of Jefferson County, Alabama, and also maintains a private law practice; provided, that the matter is not related to the attorney's service with the circuit court; that the matter is neither pending, nor arose in the court employing the attorney/judicial assistant; and, where the matter came to the attorney/judicial assistant's attention outside his capacity as a judicial assistant.

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AUTHORITY

By 4-0 vote of the Alabama Ethics Commission on February 6, 2008.



John H. Cooper, Esq.
Chair
Alabama Ethics Commission