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December 7, 2023

ADVISORY OPINION NO. 2023-04

Brian Jones
District Attorney
39th Judicial Circuit

P.O. Box 415
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Revolving Door / Public Employee /
Representing Clients Before Former Public
Employer

The “Revolving Door” provisions of the Ethics Act do not prohibit former employees of a District Attorney’s Office from representing criminal defendants in cases prosecuted by the District Attorney’s Office that employed them within two years after they leave their public position.

Dear Mr. Jones:

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.

FACTS

Former Assistant District Attorneys at the Limestone County District Attorney’s Office are seeking to enter private practice in Limestone County within two years of their departure from the District Attorney’s Office.

QUESTION PRESENTED

Do the “Revolving Door” provisions of the Ethics Act prohibit a former public employee who served as an Assistant District Attorney from representing clients who are being prosecuted by the District Attorney’s office where they served as a public employee until two years after they left their public position?

ANALYSIS

Ala. Code § 36-25-13(c) states:

(c) No public employee shall serve for a fee as a lobbyist or otherwise represent clients, including his or her employer before the board, agency, commission, or department, of which he or she is a former employee or worked pursuant to an arrangement such as a consulting agreement, agency transfer, loan, or similar agreement for a period of two years after he or she leaves such employment or working arrangement. For the purposes of this subsection, such prohibition shall not include a former employee of the Alabama judiciary who as an attorney represents a client in a legal, non-lobbying capacity.

While an attorney representing criminal defendants in Limestone County would necessarily have to interact with the Limestone County District Attorney’s Office through the discovery process as well as in plea negotiations that are later presented to the court for consideration and approval, such interactions do not constitute a representation of their clients “before” the District Attorney’s Office. Their representation is “before” the court, and the interactions with the District Attorney’s Office are an incidental part of their representation before the court and are not prohibited by the “Revolving Door” provisions of the Ethics Act.

Therefore, the “Revolving Door” Provisions of the Ethics Act do not prohibit former employees of the Limestone County District Attorney’s Office from entering private practice in the same county where they served as a public employee within two years of leaving their public position.

However, a former employee of the Limestone County District Attorney’s Office may not represent any client or aid, counsel, advise, consult, or assist in representing any other person in connection with any judicial proceeding or other matter in which the state

is a party or has a direct and substantial interest and in which they participated personally and substantially as a public employee or which was within or under their official responsibility as a public employee.¹

CONCLUSION

The “Revolving Door” provisions of the Ethics Act do not prohibit former employees of a District Attorney’s Office from representing criminal defendants in cases prosecuted by the District Attorney’s Office that employed them within two years after they leave their public position.

AUTHORITY

By 3/0 vote of the Alabama Ethics Commission on December 7, 2023.



Lyn Stuart
Vice-Chair
Alabama Ethics Commission

¹ Ala. Code § 36-25-13(g): No former public official or public employee of the state may, within two years after termination of office or employment, act as attorney for any person other than himself or herself or the state, or aid, counsel, advise, consult or assist in representing any other person, in connection with any judicial proceeding or other matter in which the state is a party or has a direct and substantial interest and in which the former public official or public employee participated personally and substantially as a public official or employee or which was within or under the public official or public employee's official responsibility as an official or employee. This prohibition shall extend to all judicial proceedings or other matters in which the state is a party or has a direct and substantial interest, whether arising during or subsequent to the public official or public employee's term of office or employment.