



H. Dean Buttram, Jr., Esq, Chairman
James T. Pursell, Vice-Chairman
Henry B. Gray III
Camille S. Butrus
Helen Shores Lee, Esq.

STATE OF ALABAMA ETHICS COMMISSION

MAILING ADDRESS

P.O. BOX 4840
MONTGOMERY, AL
36103-4840

STREET ADDRESS

RSA UNION
100 NORTH UNION STREET
SUITE 104
MONTGOMERY, AL 36104



E. J. (Mac) McArthur
Director

June 5, 1996

TELEPHONE (334) 242-2997
FAX (334) 242-0248

ADVISORY OPINION NO. 96-60

Mr. William M. Bowen, Jr., Esquire
Steiner, Crum, & Baker
Post Office Box 668
Montgomery, Alabama 36101-0668

Revolving Door/Former
Member Of Alabama Court
Of Criminal Appeals And
Judicial Inquiry Commission
Representing Clients Before
The Judicial Inquiry
Commission.

A judge on the Alabama
Court of Criminal Appeals
who also served as a member
of the Judicial Inquiry
Commission whose service
on the Judicial Inquiry
Commission ended prior to
June 19, 1996, is not
prohibited from representing
clients before the Judicial
Inquiry Commission pursuant
to Section 36-25-13.

Prior to June 19, 1996, a
former judge on the Alabama
Court of Criminal Appeals
who also served as a member
of the Judicial Inquiry

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Commission may not represent clients before the Judicial Inquiry Commission for a period of three years, after leaving service on that commission, unless he notifies the Ethics Commission of such representation within five days.

Dear Mr. Bowen:

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

Does the two-year prohibition provided by Section 36-25-13 prevent a former member of the Alabama Court of Criminal Appeals who also served on the Judicial Inquiry Commission from appearing on behalf of, and providing legal representation to a judge in a matter before the Judicial Inquiry Commission?

FACTS AND ANALYSIS

The Honorable William M. Bowen, Jr. served as a member of the Alabama Court of Criminal Appeals, from January of 1977 until January of 1995, when he retired. He presently receives judicial retirement, and is engaged in the private practice of law. While serving as an Appellant Judge, he was appointed by the Alabama Supreme Court to the Judicial Inquiry Commission, where he served from November of 1986 until January of 1995. He served as Chairman of the Judicial Inquiry Commission from June 23, 1989 until January 16, 1995.

As of January 16, 1995, Judge Bowen no longer serves as a member of the Judicial Inquiry Commission or the Alabama Court of Criminal Appeals.

The amended Alabama Ethics Law, Code of Alabama, 1975, Section 36-25-13(a) states:

"(a) No public official shall serve for a fee as a lobbyist or otherwise represent clients, including his or her employer before the board, agency, commission, department, or legislative body, of which he or she is a former member for a period of two years after he or she leaves such membership. For the purposes of this subsection, such prohibition shall not include a former member of the Alabama judiciary who as an attorney represents a client in a legal, non-lobbying capacity."

Section 36-25-13(a) under the prior Ethics Law states:

"No former state official or employee shall serve for a fee as a lobbyist or represent clients before the body of which he is a former member or employee for a period of three years after he leaves such membership or employment, unless notice of such representation is given within five days after such appearance to the state ethics commission in the manner prescribed by the commission."

Based on the dates of service on both the Alabama Court of Criminal Appeals and the Judicial Inquiry Commission, Judge Bowen is not prohibited from appearing on behalf of, and providing legal representation to a judge appearing before the Judicial Inquiry Commission as his service on that Commission ended prior to the effective date of amended Section 36-25-13.

While Judge Bowen is not prohibited from appearing on behalf of, and providing legal representation to a judge appearing before the Judicial Inquiry Commission, prior to June 19, 1996, if he undertakes such representation, he must notify the Alabama Ethics Commission within five days of doing so.

CONCLUSION

A judge on the Alabama Court of Criminal Appeals who also served as a member of the Judicial Inquiry Commission whose service on the Judicial Inquiry Commission ended prior to June 19, 1996, is not prohibited from representing clients before the Judicial Inquiry Commission pursuant to Section 36-25-13.

Prior to June 19, 1996, a former judge on the Alabama Court of Criminal Appeals who also served as a member of the Judicial Inquiry Commission may not represent clients before the Judicial Inquiry Commission for a period of three years, after leaving service on that commission, unless he notifies the Ethics Commission of such representation within five days.

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AUTHORITY

By 4 - 0 vote of the Alabama Ethics Commission on June 5, 1996.

A handwritten signature in black ink, appearing to read 'H. Dean Buttram, Jr.', written over a horizontal line.

H. Dean Buttram, Jr.
Chair
Alabama Ethics Commission