



# STATE OF ALABAMA ETHICS COMMISSION



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July 1, 1998

## ADVISORY OPINION NO. 98-36

Louis B. Jordan  
Probation Officer  
State Probation & Parole Office  
Post Office Box 19337  
Homewood, Alabama 35219

Conflict Of Interests/Probation Officer  
Practicing Law.

A Probation Officer with the State Probation & Parole Office may practice law in his free-time; provided, that he not use or cause to be used equipment, facilities, time, materials, human labor, or other public property under his discretion or control to benefit him in practicing law or in obtaining clients; that he practice law on his own time, whether it is after hours, on weekends, etc.; that he not use his position, nor the mantle of his office, to obtain clients; that he not represent family members of individuals he supervises in his capacity with the State Probation & Parole Office; and, that he not practice criminal law in the area in which he has jurisdiction as a Probation Officer.

Further, a Probation Officer may serve as a City Prosecutor for a Municipality, as individuals charged in City Court are charged with misdemeanors which are not subject to probation and parole supervision.

The requestor of this opinion is advised that there may be Departmental Policies or Guidelines that regulate outside employment which may prohibit such outside employment.

As other statutes may be applicable other than the Alabama Ethics Law, the requestor of this opinion is advised to contact the Office of Attorney General for an Advisory Opinion.

Dear Mr. Jordan:

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.

#### **QUESTIONS PRESENTED**

- 1) May a Probation Officer of the State Probation & Parole Office practice law on his own free time?
- 2) If allowed to practice law, would it be permissible for a Probation Officer of the State Probation & Parole Office to represent family members in criminal matters, since he cannot supervise family members?
- 3) May a Probation Officer of the State Probation & Parole Office be a City Prosecutor for a Municipality?

#### **FACTS AND ANALYSIS**

Louis B. Jordan is employed as a Probation Officer with the State Probation & Parole Office. He is interested in practicing law on his own free time, and therefore, is requesting an opinion from the Ethics Commission in this regard.

Mr. Jordan's plan is to primarily practice criminal law in the Municipal Night Courts in the State of Alabama. Mr. Jordan states that he would also take annual leave if any conflict should arise regarding his working hours as a Probation Officer and his practicing of law, but further explains

that most Night Courts meet after his normal working hours as a Probation Officer.

Mr. Jordan relates that his practice would be limited to people who are not present or past probationers or parolees who have been on his case load. Mr. Jordan states that he would also check to make sure that these people were not currently on probation or parole with the State Probation & Parole Office before he accepted representation of any individual as a lawyer. Mr. Jordan states that he would also not investigate or supervise anybody who is a probationer who he had previously performed legal work for as a lawyer.

Mr. Jordan passed the Bar Exam in April, 1996 and is currently licensed with the Alabama State Bar. Mr. Jordan assures the State that, as he was able to do his job while in school, he will continue to do a good job as a Probation Officer if allowed to practice law after hours.

Mr. Jordan further explains that he will take steps to assure that conflicts do not arise between his legal representation and his job as a Probation Officer.

Mr. Jordan notes that several Municipalities in the State of Alabama allow Police Officers to practice law and also perform their duties as Police Officers.

The Alabama Ethics Law, Code of Alabama, 1975, Section 36-25-1(8) states:

"(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 36-25-13(b) states:

"(b) 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 for a period of two years after he or she leaves such employment. 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."

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 36-25-1(2) states:

"(2) BUSINESS WITH WHICH THE PERSON IS ASSOCIATED. Any business of which the person or a member of his or her family is an officer, owner, partner, board of director member, employee, or holder of more than five percent of the fair market value of the 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."

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."

Mr. Jordan has sought an opinion of the Birmingham Bar Association and is seeking an opinion from the State Bar Association.

Based on the facts as presented and the above law, a Probation Officer with the State Probation & Parole Office may practice law in his free-time; provided, that he not use or cause to be used equipment, facilities, time, materials, human labor, or other public property under his discretion or control to benefit him in practicing law or in obtaining clients; that he practice law on his own time, whether it is after hours, on weekends, etc.; that he not use his position, nor the mantle of his office, to obtain clients; that he not represent family members of individuals he supervises in his capacity with the Probation Officer; and, that he not practice criminal law in the area in which he has jurisdiction as a Probation Officer.

Further, a Probation Officer may serve as a City Prosecutor for a Municipality, as individuals charged in City Court are charged with misdemeanors which are not subject to probation and parole supervision.

It should also be noted that there may be Departmental Policies or Guidelines that regulate outside employment which may prohibit such outside employment.

It is also suggested that as other statutes may be applicable other than the Alabama Ethics Law, the requestor of this opinion is advised to contact the Office of Attorney General for an Advisory Opinion.

### CONCLUSION

A Probation Officer with the State Probation & Parole Office may practice law in his free-time; provided, that he not use or cause to be used equipment, facilities, time, materials, human labor, or other public property under his discretion or control to benefit him in practicing law or in obtaining clients; that he practice law on his own time, whether it is after hours, on weekends, etc.; that he not use his position, nor the mantle of his office, to obtain clients; that he not represent family members of individuals he supervises in his capacity with the State Probation & Parole Office; and, that he not practice criminal law in the area in which he has jurisdiction as a Probation Officer.

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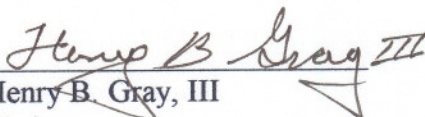
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As other statutes may be applicable other than the Alabama Ethics Law, the requestor of this opinion is advised to contact the Office of Attorney General for an Advisory Opinion.

**AUTHORITY**

By 4-0 vote of the Alabama Ethics Commission on July 1, 1998.

  
Henry B. Gray, III  
Chair  
Alabama Ethics Commission