

May 23, 2005

Judge Herbert T. Wright
Attorney at Law
108 South Pulaski
Little Rock, AR 72201

RE: Opinion 2005-04

Dear Judge Wright:

You have informed us that you are a part-time District Judge in Pulaski County. You preside over the Wrightsville District Court, which hears only civil cases, small claims and traffic offenses. In light of the limited jurisdiction of your court, you ask whether you may represent criminal defendants on felony charges in the Pulaski County Circuit Courts.

We have addressed similar questions in previous opinions. Advisory Opinion 98-02 advised that a municipal judge should decline to represent a criminal defendant in any circuit court in which the same prosecuting attorney has jurisdiction. In Advisory Opinion 98-03, we re-emphasized the principle: "To prevent the appearance of impropriety, the private law practice of the judge must be subordinated to the judicial responsibility." In Opinion 2002-02 we stated that the prohibition applies to part-time judges serving temporarily, as well as continuing part-time judges. "Nor do we believe that the appearance of impropriety may be cured by waiver."

Your letter suggests some methods to avoid actual conflicts, such as representing only felony defendants in circuit court. But you also admit that you would have contact with the other district courts in setting a bond. However, we do not believe that such attempts can resolve the underlying issue.

As we have stated, an individual who accepts the position of a continuing part-time judge places the judicial office first in service and priority, and certain restrictions must follow. In our opinion, a part-time judge may not represent any criminal defendants in the same circuit. We have adhered to this opinion since 1998, and the Supreme Court has not altered the Code of Judicial Conduct on this issue.

Sincerely,

Howard Brill
For the committee