



The Supreme Court of Texas

CHIEF JUSTICE
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December 19, 2024

Mr. Charles L. "Chip" Babcock
Chair, Supreme Court Advisory Committee
Jackson Walker L.L.P.
cbabcock@jw.com

Re: Referral of Rules Issue

Dear Chip:

The Supreme Court requests the Advisory Committee to study and make recommendations on the following matter.

Court Attorneys and Pro Bono. Canon 3(C)(2) of the Code of Judicial Conduct requires court staff to observe the standards and fidelity and diligence that apply to a judge. Canon 4(G) prohibits a judge from practicing law except as permitted by statute or the Code. The Texas Ethics Commission, in Ethics Opinion 283, has interpreted these two Code provisions as prohibiting court attorneys from performing pro bono work while working at a court. The Court asks the Committee's advice on whether court attorneys should be permitted to perform pro bono work and to draft any recommended rule amendments or comments. The Committee should consider, among other things, the justice gap, the type of pro bono work (e.g., one-time clinics versus in-court proceedings), whether the client is a party or person whose interests have come or are likely to come before the court at which the court attorney is employed, and the importance of diligently completing court work.

As always, the Court is grateful for the Committee's counsel and your leadership.

Sincerely,

A handwritten signature in black ink, appearing to read "Nathan L. Hecht", written over a horizontal line.

Nathan L. Hecht
Chief Justice

Attachment

**Excerpts from the TEXAS CODE OF JUDICIAL CONDUCT
(As amended through September 1, 2024)**

Canon 3: Performing the Duties of Judicial Office Impartially and Diligently

C. Administrative Responsibilities.

(2) A judge should require staff, court officials and others subject to the judge's direction and control **to observe the standards of fidelity and diligence that apply to the judge** and to refrain from manifesting bias or prejudice in the performance of their official duties.

Canon 4: Conducting the Judge's Extra-Judicial Activities to Minimize the Risk of Conflict with Judicial Obligations

G. Practice of Law. **A judge shall not practice law except as permitted by statute or this Code.** Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family.

**MAY AN APPELLATE COURT STAFF ATTORNEY PERFORM PRO BONO
APPELLATE WORK?**

Opinion No. 283 (2001)

QUESTION:

May an attorney employed at a state intermediate appellate court perform pro bono work on a federal appeal when the issue appealed involves only a federal issue and no state, Texas or otherwise, has concurrent jurisdiction? May the same attorney perform pro bono work on an appeal in another state?

ANSWER:

No, to both questions. Canon 3 B (6), (8), (10) and 3C (2) require that appellate court staff attorneys are subject to the same ethical standards as the judge for whom they work. Cannon 4G prohibits a judge from practicing law except as permitted by statute or this Code. Pro bono appellate work in a federal or sister-state requires the practice of law. No Code sections provide an exception to the prohibition against practicing law under the circumstances presented here.