

**ADVISORY COMMITTEE
ON STANDARDS OF JUDICIAL CONDUCT
OPINION NO. 3 - 2019**

RE: Propriety of a circuit court judge receiving payment of attorney fees for legal work pertaining to veterans' disability cases performed before his ascension to the bench.

FACTS

A newly-elected judge was involved, prior to his ascension to the bench, in several veterans' disability cases for several years. Attorney representation in these type of cases require accreditation through the U.S. Department of Veterans Affairs and involve payment for accredited attorney representatives only when a successful appeal results in an award of past-due benefits ("retro pay") to the veteran. *See 38 U.S.C §5904(d)*. The appeals process for these claims may take several years after an accredited attorney advocates via written briefs and/or oral arguments for their respective clients before the local VA Regional Office, Board of Veterans Appeals, and/or U.S. Court of Appeals for Veterans Claims. The judge recently became aware of a successful appeal in a case handled years before becoming a judge, and a forthcoming attorney fee award pertaining to the case.

The judge inquires about the propriety of receiving attorney fees for cases in which a veteran's disability appeal was prosecuted at his or her prior law firm, and well prior to becoming a judge. The judge notes that this inquiry is limited solely to the question of fees arising out of veterans' disability cases. Further, the judge was the only attorney at this previous law firm who handled veterans' disability cases.

CONCLUSION

A judge may receive fees for legal work performed on veterans' disability cases prior to his or her ascension to the bench.

OPINION

This Committee has previously addressed the issue of a judge receiving fees for legal work previously performed and concluded as follows:

Opinion 8-2003 - Propriety of a judge receiving payment of fees for work performed before his ascension to the bench as part of structured settlement.

Conclusion: A judge can receive fees for legal work performed prior to his ascension to the bench. Maintaining a trust account in the name of judge and judge's former partner does not disqualify judge from presiding over a matter in which the judge's former partner appears.

Opinion 12-2013 - Propriety of a recently-elected Circuit Court judge receiving payment of fees for a case initiated prior to the judge's ascension to the bench.

Conclusion: A judge can receive fees for cases referred to another attorney prior to the judge's ascension to the bench.

See also Opinion 21-1998 (A judge can receive fees for legal work performed prior to his ascension to the bench. Maintaining a trust account in the name of judge and judge's former partner does not disqualify judge from presiding over a matter in which the judge's former partner appears).

In Advisory Opinion 8-2003 and 21-1998, the Committee considered the propriety of newly-elected judges receiving a share of a contingency fee for legal work performed prior to their judicial positions. The Committee also stated “a newly elected judge may receive reasonable remuneration for services actually rendered prior to taking the bench[.]”

Here, the inquiring judge performed certain legal work on veterans' disability cases but the payment of fees was not possible until after an appellate decision, which was issued after the judge ascended to the bench. Under the Canons and the conclusions of our previous opinions, we find that a judge may receive attorney fees for work completed in prosecuting veterans' disability cases prior to becoming a judge, particularly where he was the only attorney rendering legal services on such cases.

S/ LETITIA H. VERDIN, CHAIR
LETITIA H. VERDIN, CHAIR

S/ USHA JEFFERIES BRIDGES
USHA JEFFERIES BRIDGES

S/ KEITH M. BABCOCK
KEITH M. BABCOCK

January 15, 2019.