

**Opinion on Municipal Judges Serving as a Hearing Officer for the
Setoff Debt Collection Program**

ADVISORY COMMITTEE
ON STANDARDS OF JUDICIAL CONDUCT

OPINION NO. 18 – 1999

RE: Amended Opinion No. 18-1999.

FACTS

Opinion 16-1999, issued November 11, 1999, expressed the opinion that a Municipal Judge could not act as an arbitrator for a debt set-off program because of limitations set on the judge's extra-judicial conduct by Canon 4. Opinion 18-1999, issued November 19, 1999, advised that a Magistrate and Municipal judge could serve as a hearing officer for the same or similar debt set-off program. After further review, these two opinions are found to be in conflict with each other. Therefore, Opinion 18-1999 is amended to advise as follows.

CONCLUSION

A Chief Magistrate and Municipal Judge may not serve as a hearing officer for a debt setoff program.

OPINION

Opinion 16-999 advised that a judge may not serve as an arbitrator for a debt set-off program because Canon 4(F) expressly forbids a judge " to act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law". Authorized by "law" is defined as authorized by court rules as well as statutes, constitutional provisions and decisional law. Rule 501, SCACR, Terms. Commentary goes on to say that Canon 4(F) does not prohibit a judge from participating in these activities if the activities are performed as part of judicial duties. Rule 501, SCACR, Canon 4(F), Commentary. The arbitration activity in question in Opinion 16-1999 was found not to be a part of a judge's judicial duties nor was it expressly authorized by law and therefore was not allowed.

Opinion 18-1999 allowed a judge to serve as a hearing officer for a debt set-off program., analyzing the situation under the "dual office holding" restriction of the South Carolina Constitution, Article VII § 1A. The opinion did not take the limitations in Canon 4 into account in the manner in which it should. A hearing officer is defined as "one who presides at an administrative hearing with power to administer oaths, take testimony, rule on questions of evidence, regulate course proceedings and make agency determinations of fact". Black's Law Dictionary, 6th ed. p.46, 722 (1990). Presiding over an administrative hearing falls within the parameters of "performing a judicial function", as referred to in Canon 4(F).

Therefore, a judge cannot serve as a hearing officer for a debt set-off program as this is performing a judicial function in a private capacity not authorized by law.

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