

Judicial Inquiry Commission

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August 3, 1987

The Judicial Inquiry Commission has considered your request for an opinion concerning whether under the Alabama Canons of Judicial Ethics a circuit judge may act as one of three co-trustees of a certain trust. The trust was established in the last will and testament of an attorney, who practiced before the judge. The remaining co-trustees are attorneys, who currently practice before the judge. The beneficiary of the trust is the widow of the grantor.

It is the opinion of the Commission that the judge may serve as a co-trustee under the described circumstances so long as such service falls within the guidelines established by Canon 5 of the Alabama Canons of Judicial Ethics. Canon 5D provides in pertinent part as follows:

“A judge should not serve as executor, administrator, trustee, guardian, or other fiduciary, if such service will interfere with the proper performance of his judicial duties. As a fiduciary, a judge is subject to the following restrictions:

- (1) He should not serve if it is likely that as a fiduciary he will be engaged in proceedings that would ordinarily come before him.
- (2) While acting as a fiduciary, a judge is subject to the same restrictions on financial activities that apply to him in his personal capacity.”

This Canon provides three broad limitations upon a judge's service as a fiduciary. Such service is prohibited if (1) it will interfere with the proper performance of the judge's judicial duties, i.e., take time away from his judicial duties, cause him to be disqualified in cases coming before him, etc; (2) as a fiduciary he will be engaged in proceedings which would ordinarily come before him, i.e., trust accounting proceedings, disputes about the trust administration, etc.; and (3) if the financial activities of the trust would be violative of Canon 5C which sets out restrictions on a judge's personal financial activities.

The facts set out in the opinion request are very limited and do not per se present a conflict with Canon 5D. Should the judge elect to serve in such capacity caution should be exercised to assure continued compliance with the guidelines of Canon 5D during the progress of your administration.

Sincerely,
JUDICIAL INQUIRY COMMISSION