

Judicial Inquiry Commission

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The Judicial Inquiry Commission has considered your request for an advisory opinion concerning whether it might be a violation of the Canons of Judicial Ethics for a district judge to serve as a director of the Alabama Forestry Association. You stated that it was extremely unlikely that the association would be engaged in proceedings that would ordinarily come before the district court, and that it was not known to be regularly engaged in adversary proceedings in other courts. You also stated that you would not solicit funds for the organization, and that the prestige of your judicial office would not be used for such purpose. You indicated that the Alabama Forestry Association is a multipurpose organization of tree farmers such as yourself and other members of the timber industry, engaging in charitable and educational activities and also working with the legislature and other areas of government through its executive and legislative affairs directors.

A judge's extra-judicial activities are governed by Canon 5 of the Alabama Canons of Judicial Ethics. You particularly inquired about Canon 5B, which provides as follows:

Civic and Charitable Activities:

A judge may participate in civic and charitable activities that do not reflect adversely upon his impartiality or interfere with the performance of his judicial duties. A judge may serve as an officer, director, trustee, or nonlegal advisor of an educational, religious, charitable, fraternal, or civic organization or institution not conducted for the economic or political advantage of its members, subject to the following limitations:

- (1) A judge should not serve if it is likely that the organization or institution will be engaged in proceedings that would ordinarily come before him or will be regularly engaged in adversary proceedings in any court.
- (2) It is desirable that a judge not solicit funds for any educational, religious, charitable, fraternal, or civic organization or institution, or use or permit the use of the prestige of his office for that purpose, but he may be listed as an officer, director, or trustee of such an organization or institution.
- (3) A judge should not give investment advice to such an organization or institution, but he may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

It does not appear that service as a director of the Alabama Forestry Association would be in violation of subparts (1) or (2) of Canon 5B under the facts you related, nor that such service would be otherwise in violation of Canon 5B to the extent that any associated civic or charitable activities did not reflect adversely upon the judge's impartiality or interfere with the performance of judicial duties, so long as no investment or legal advice is given to the association. However, the answer to your inquiry cannot be made solely with reference to Canon 5B, since that Canon refers to service as a director of an organization 'not conducted for the economic or political advantage of its members.' While the association in question has educational and charitable purposes, it also appears to be engaged in activities "conducted for the economic or political advantage of its members." See, Advisory Opinion 92-439 (to the extent that an organization has a purpose of securing benefits for and promoting the welfare and interests of a particular interest group, the organization is "political" in nature).

Canon 5C sets forth the restrictions on financial activities of judges, and states in pertinent part:

- (1) A judge should refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, or exploit his judicial position.
- (2) Subject to the requirements of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity including the operation of a business.
- (3) A judge should manage his investments and other financial interests to minimize the number of cases in which he is disqualified.

Under part D of Canon 5, it is provided that a judge should not serve as a fiduciary

"if such 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."

Under Canon 4, a judge may, subject to the proper performance of his judicial duties, engage in various activities involving improvement of the law, including service as a director of an organization devoted to improvement of the law, if in so doing he does not cast doubt on his capacity to decide impartially any issue that may come before him. Canon 4D.

Generally, under the Alabama Canons of Judicial Ethics a judge is discouraged but not prohibited from engaging in any political activity unrelated to his or her own campaign. A judge may engage in political activity on behalf of measures to improve the law but should refrain from political activities inappropriate to his judicial office and must be careful to adhere to the admonition of Canon 7 to “conduct himself in a manner at all times to prevent any political considerations, entanglements, or influences from ever becoming involved in or from ever appearing to be involved in any judicial decision or in the judicial process.” Canon 7A(l) and (3). Also, a judge must be careful not to “lend the prestige of his office to advance the private interests of others” (Canon 2C), and to “conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” Canon 2A.

Therefore, it is the opinion of this Commission that a district judge may hold a position as a director of the Alabama Forestry Association if he can do so within the constraints of Canons 2, 4, 5B, 5C, 5D and 7. For example, a conflict with judicial duties could arise if the association takes a public stand on issues coming before the judge in his judicial capacity. Of course, judicial activities take precedence over other activities (Canon 3), and the judge is disqualified in any proceeding in which the association is a party. See Canons 3C(l)(c), 3C(l)(d)(i), and 3D. You did not provide any information concerning compensation; the area of compensation, including expense reimbursement, is covered in Canon 6.