

JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 02-804

SERVICE ON BOARD OF FOSTER AND ADOPTIVE PARENTS ASSOCIATION

ISSUES

May a juvenile court judge serve on the board of directors of the Alabama Foster and Adoptive Parents Association? **Answer:** Yes, so long as such service complies with the restrictions in Canon 5B.

FACTS

A juvenile court judge who tries all types of dependency matters, including termination of parental rights cases, inquires whether he may serve on the state board of directors of the Alabama Foster and Adoptive Parents Association. This association was founded to serve, advocate, promote and encourage foster and adoptive parents throughout the State of Alabama. It provides peer support, scholarships for parents to attend training, scholarships for children in foster and adoptive families, guest speakers for training events and legislative alerts. It also produces a newsletter, maintains a web site, advocates for legislative and agency change, and is engaged in encouraging public awareness, educating local, state and national community leaders, and improving the care, support and training systems for foster and adoptive families.

DISCUSSION

Canon 5 governs a judge's extrajudicial activities, providing that "[a] judge should regulate his extra-judicial activities to

minimize the risk of conflict with his judicial duties." Canon 5B addresses civic and charitable activities. It provides that 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," and that a judge may serve as a director or nonlegal advisor of a civic or charitable 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.

The first question with respect to the proposed activity is whether the judge's participation

would “reflect adversely upon his impartiality.” The Commission does not believe that service on the board of the association in question would necessarily create an adverse reflection on the judge’s impartiality. However, it is possible that the actual activities of the association and/or its board might create such a reflection, for example, by promoting positions on issues the judge is called upon to decide, advocating the rights of foster or adoptive parents in specific cases, or providing support for foster or adoptive parents in connection with court cases.

The judge should examine the specific activities of the association and its board. As the Commission wrote in Advisory Opinion 89-389, “[h]e must make every effort to avoid giving the appearance of a predisposition in matters that are likely to come before him and to avoid participation in matters which may

otherwise cause his disqualification.” If the judge determines that service on the association’s board does not create an adverse reflection on his impartiality, he must then consider the time commitment that will be required, in order to assure that the position will not interfere with his judicial duties. Canon 5B.

The information provided does not suggest that the association will be engaged in proceedings that would ordinarily come before the judge, or that it will be regularly engaged in adversary proceedings in any court. Thus, no conflict with Canon 5B(1) is apparent.

The judge should note that, under Canon 5B, a judge may not give legal advice to a civic or charitable organization and, under Canon 5B(3), he may not give investment advice to such an organization. In addition, participation in the solicitation of funds for a civic or charitable organization is discouraged by Canon 5C(2), and the judge is prohibited from using his judicial position or title in fund-raising endeavors. Advisory Opinions 00-753 and 01-773.

If the judge undertakes to serve on the association’s board, he must be ever mindful of the possibility that changes in association and/or board activities may create an adverse reflection on his impartiality and, thus, require resignation from the position.

REFERENCES

Advisory Opinions 89-389, 00-753 and 01-773.

Alabama Canons of Judicial Ethics, Canons 5, 5B, 5B(1), 5B(2), 5B(3)

This opinion is advisory only and is based on the specific facts and questions submitted by the judge who requested the opinion pursuant to Rule 17 of the Rules of Procedure of the Judicial Inquiry Commission. For further information, you may contact the Judicial Inquiry Commission, P. O. Box 303400, Montgomery, Alabama 36130-3400; tel.: (334) 242-4089; fax: (334) 353-4043; E-mail: jic@alalinc.net.