

JUDICIAL INQUIRY COMMISSION

DATE ISSUED: DECEMBER 5, 2003

ADVISORY OPINION 03-828

DONATING LEGAL SERVICES TO A CHARITABLE ORGANIZATION

ISSUE

May a part-time municipal judge donate legal services to a charitable organization?

Answer: Yes.

FACTS

A part-time municipal judge serves as vice-chairman of a Habitat for Humanity chapter. He asks whether the Alabama Canons of Judicial Ethics prohibit him from being responsible for real property closings of Habitat for Humanity houses, including drafting notes, mortgages, and HUD1's, and issuing title policies.

DISCUSSION

The inquiring judge observes that Canon 5B states that, subject to certain limitations, 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" (emphasis added). Also, in Advisory Opinion 83-174, the Commission cautioned a municipal judge to be "particularly mindful of the implications of Canon 5B that a judge not serve as legal advisor to organizations which are charitable, religious, fraternal, etc."

"Judges whose duties are not exclusively judicial or who do not serve on a full-time basis cannot be subjected to a strict, literal compliance with the Canons of Ethics." Alabama Canons of Judicial Ethics, Compliance With The Canons of Judicial Ethics. Section A of the Compliance provisions, which addresses part-time judges, contains a list of canons with which a part-time judge is

not required to comply: "A part-time judge: (1) is not required to comply with Canon 5D,E, F and G, and Canon 6C." Canon 5F states, "A judge should not practice law."

Thus, the canons expressly provide that part-time judges may practice law. The Commission can find no apparent basis for prohibiting a part-time judge from donating legal services to charity when he or she is allowed to provide such services for compensation.

The section in the ABA Model Code of Judicial Conduct that corresponds to Alabama Canon 5B, Model Code Canon 4C(3), also uses the term "non-legal advisor." The Commentary to Model Canon 4C(3) states that "[s]ervice by a judge on behalf of a civic or charitable organization may be governed by other provisions of Canon 4 in addition to Section 4C. For example, a judge is prohibited by Section 4G from serving as a legal advisor to a civic or charitable organization." Model Canon 4G is the same as Alabama Canon 5F, "A judge should not practice law." Like the Alabama canons' Compliance provisions, the Application provisions for the Model Code state that part-time judges are not expected to comply with the prohibition against practicing law.

It is the opinion of the Commission that the Alabama Canons of Judicial Ethics do not prohibit a part-time municipal judge from donating legal services to a charitable organization. To the extent that Advisory Opinion 83-174 is in conflict with this opinion, it is hereby withdrawn.

REFERENCES

Advisory Opinion 83-174.

Alabama Canons of Judicial Ethics, Canon 5B, and Compliance With The Canons of

Judicial Ethics, Section A(1).

American Bar Association Model Code of Judicial Conduct, Canons 4C(3) and 4G, Commentary to Canon 4C(3), and Application of the Code of Judicial Conduct, Section C.

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.