

JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 06-860

SERVING AS A FIDUCIARY WITHOUT COMPENSATION - SHAREHOLDER'S AGENT FOR THE BENEFICIARIES OF AN ESCROW AGREEMENT

matter involving the bank. Service as shareholders' agent will not detract from the time required for the judge to perform his judicial duties.

ISSUE

May a newly appointed circuit court judge continue to serve as the shareholder's agent for the beneficiaries of an escrow agreement arising out of the sale of local bank under the facts presented? **Answer:** Yes, a judge may serve in a fiduciary capacity under the facts presented.

DISCUSSION

Canon 5 of the Alabama Canons of Judicial Ethics governs a judge's extra-judicial activities of a business, civic, and charitable nature. Specifically Canon 5D provides as to serving a s a fiduciary,

FACTS

Prior to his appointment as a circuit judge, an attorney was appointed to hold, without compensation, the fiduciary position of shareholders' agent for an escrow account arising out of the sale of a local bank. The attorney is a shareholder of the bank and serves on the bank's board of directors. Under the escrow agreement, the amount of \$2,500,000.00 is deposited to settle certain claims that might arise against the shareholders during the sale of the bank and exchange of stock. The shareholders' agent is authorized to examine claims and make payments from the escrow account. In the event of a disagreement the disputed claims must be settled by binding and non-appealable arbitration outside in the State of Delaware.

“Fiduciary activities. 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 serving as a fiduciary, a judge is subject to the same restrictions on financial activities that apply to him in his personal capacity.

Service as the shareholders' agent began prior to the judge's appointment as judge. His actions as shareholders' agent does not involve any judicial duties. Because of his intimate involvement with the bank including his previous service as shareholders' agent, the judge would be disqualified from hearing any

It is clear under this Canon that a judge may serve in a fiduciary capacity if certain conditions are met. These conditions are stated above and based on the information provided by the judge appear to be met under the facts presented the facts presented.

REFERENCES

Canon 5, Alabama Canons of Judicial Ethics.

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.