

JUDICIAL INQUIRY COMMISSION

DATE ISSUED: February 10, 2006

ADVISORY OPINION 06-862

RETIRED ACTIVE JUDGE ENGAGING IN THE PRACTICE OF LAW, MEDIATION AND ORGANIZATIONAL CONSULTING, AND CHARITABLE FUND RAISING

ISSUE

May a retired judge who serves part time in an active duty status engage in (a) the practice of law, (b) organizational and mediation consulting, and/or (c) fund raising for non-profit organizations? **Answer:** Yes, subject to the provisions of the Alabama Canons of Judicial Ethics that apply to such judges.

FACTS

A retired judge who serves as a judge in an active duty status on a part-time basis plans to open an office in order to practice mediation and organizational consulting, and to consult with attorneys in certain complex cases. The judge also proposes to engage in fund raising for two non-profit agencies on whose boards the judge serves.

DISCUSSION

The applicability of the Alabama Canons of Judicial Ethics to retired judges is specified in the Canons' Compliance provisions. Section D(2) of the Compliance provisions states:

Retired and supernumerary justices or judges, who are serving parttime on the Supreme Court or on either of the courts of appeals or on any circuit court or district court in the state, in an active duty status, shall be required to comply with all of these Canons, except Canon 5C(3), D, E, F, G and Canon 6C.

Canon 5C governs a judge's general financial activities. Canons 5C(1) and (2), which do apply to retired judges serving part time in an active-duty status, state that a judge may not engage in financial

and business activities that "tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, or exploit his judicial position," and that, subject to such restrictions, any judge may engage in remunerative activities.

Retired part-time active judges are specifically exempted by Section D(2) of the Compliance provisions from application of Canon 5C(3), which states that a judge must manage his financial activities so as to minimize the number of cases in which he will be disqualified. Such judges are also exempted from Canon 5F (the prohibition against the practice of law), and Canon 5E (the prohibition against acting as an arbitrator or a mediator).

Thus, a retired judge serving part time in an active duty status is permitted by the Canons to engage in the practice of law and in organizational and mediation consulting so long as the judge's particular work in these areas does not reflect adversely on the judge's impartiality, interfere with the proper performance of her judicial duties, or exploit her judicial position. *See*, Advisory Opinion 86-272; *see also*, Advisory Opinion 96-609.

A retired judge serving part time in an active duty status is not exempted from complying with Canon 5B, which governs civic and charitable activities. Canon 5B(2) states the following:

(2) It is desirable that a judge not solicit funds for an 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.

Canon 5B(2) does not absolutely prohibit a judge from participating in fund solicitation, but it strongly discourages such activity.

Participation in fund raising presents a danger that the prestige of the judicial office will be used for the solicitation of funds. Advisory Opinions 81-101 and 96-596. It also involves a danger that the person solicited will feel obligated to respond favorably if the judge is in a position of influence or control. Commentary to the Model Code of Judicial Conduct, Canon 4C(3)(b) (1990). A judge who participates in fund raising for a civic or charitable organization must be ever mindful of the provisions of Canons 1 and 2, and must limit such participation so that he or she does not lend the prestige of his or her judicial office to the event or otherwise violate either the letter or the spirit of Canons 1 and 2. Advisory Opinions 83-174, 83-179, 85-242, and 96-596.

Advisory Opinion 03-819.

In Advisory Opinion 00-753, the Commission concluded that a judge may not use his judicial position or title in fund-raising activities. *See also*, Advisory Opinions 84-216 (a judge should not permit his name to be listed along with the title "Judge" on stationery of an educational foundation that he knows will be used for the purpose of soliciting funds because to do so would "permit the use of the prestige of his office for the purpose of soliciting funds"); and Advisory Opinion 96-596 (advising a judge that his name should not be listed as a judge on an invitation to a fund-raising dinner that would be held in the judge's home). A judge also should not solicit funds from a person or entity who regularly is a party to proceedings in the judge's court. Advisory Opinions 01-773 and 03-819.

Thus, it is the opinion of the Commission that a retired judge serving part time in an active duty status is not prohibited from participating in fund-raising activities on behalf of charitable

organizations. However, she should approach such activities with caution, ever mindful of the provisions of Canons 1 and 2, and she should not use her judicial position or title in fund-raising activities, nor solicit funds from a person or entity who regularly is a party to proceedings in the court on which she serves.

REFERENCES

Advisory Opinions 84-261, 86-272, 96-596, 96-609, 00-753, 1-773 and 03-819.

Alabama Canons of Judicial Ethics, Canons 1, 2, 5B, 5B(2), 5C, 5C(1), 5C(2), 5C(3), 5E, 5F and Compliance Section D(2).

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.