

## JUDICIAL INQUIRY COMMISSION

DATE ISSUED: MARCH 17, 2006

ADVISORY OPINION 06-866

### WRITING LETTER OPPOSING RELEASE OF PRISONER ON PAROLE BY JUDGE WHO PROSECUTED THE CASE AS AN ASSISTANT DISTRICT ATTORNEY

#### ISSUE

May a judge write a letter opposing the release of a prisoner on parole from a sentence imposed as the result of a conviction prosecuted by the judge as an assistant district attorney? **Answer: Yes.**

#### FACTS

More than a dozen years ago, a municipal court judge who was then an assistant district attorney prosecuted a defendant for murder. The defendant was convicted and has been an Alabama prison inmate since then. The inmate is scheduled to be considered for parole. The victim's family has contacted the judge and asked her to write a letter to the parole board in opposition to the inmate's release on parole.

#### DISCUSSION

Canon 2C contains the provisions pertinent to this inquiry: "[A judge] should not lend the prestige of his office to advance the private interests of others. . . [A judge] should not testify voluntarily as a character witness at any hearing before any court, or judicial or governmental commission." The official commentary to Canon 2C explains:

The testimony of a judge as a character witness injects the prestige of his office into the proceeding in which he testifies and may be understood to be an official testimonial. This Canon, however, does not exempt a judge from testifying if he is officially summoned.

In previous advisory opinions the Commission has advised that a judge may not voluntarily submit a letter or testimony to the parole board in support of

or in opposition to release on parole in a matter in which the judge did not participate in any official capacity because that participation would be in the nature of testimony as a character witness that is specifically prohibited under Canon 2C. See Advisory Opinion 78-44, (as a private citizen, request that favorable consideration be given an inmate by the Board of Pardons and Paroles) and Advisory Opinion 00-744, (may not voluntarily communicate with another judge or a probation officer as a character witness in connection with a pending sentence proceeding but could respond to a request for information made by an appropriate agency).

In addition, the Commission has also advised that the judge who presided over a state inmate's trial is not precluded from responding, either positively or negatively, to the proposed parole of the inmate as provided in §15-22-36(d), *Code of Alabama* 1975. See Advisory Opinions 78-44 and 83-177

Section 15-22-36(d) requires notice to the trial judge of a proposed release on parole, specifically recognizing the value of input from the trial judge in the case at issue. It also requires notice to "the district attorney who tried the subject's case. . . : provided, however, that if [that person is] dead or not serving, the notice shall be given to the district attorney . . . in which the subject was convicted." Thus, the district attorney is included in those to whom a specific notice is given. The law envisions that those officers of the court participating in the trial resulting in the conviction and sentence are given the opportunity to provide input into the parole decision.

The Commission notes, in addition, that the information will be provided by the judge in her capacity as a former assistant district attorney. Therefore, to avoid any inference of the use of the prestige of the judge's office, the information should not be provided on the judge's official letterhead and should not identify the author as a judge. The information should be consistent with

the facts known to the judge in her capacity as the trial district attorney in the matter.

#### REFERENCES

Advisory Opinions 78-44, 83-177, and 00-744.

Alabama Canons of Judicial Ethics, Canon 2C and Commentary to Canon 2C.

*Code of Alabama* 1975, §15-22-36(d).

---

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](mailto:jic@alalinc.net).