

## JUDICIAL INQUIRY COMMISSION

DATE ISSUED: NOVEMBER 8, 2006

ADVISORY OPINION 06-871

### SERVING AS OFFICER OF CIVIC OR CHARITABLE ORGANIZATION

#### ISSUES

May a circuit judge who handles domestic relations cases serve in a leadership position of a civic organization devoted to promoting and strengthening the institution of healthy marriage in his community? **Answer:** Yes, so long as such service complies with the requirements of Canon 5B.

#### FACTS

A circuit judge who handles 75% of the domestic relations cases filed in the county in which he serves, including divorces, protection from abuse cases, modification cases and contempt actions, was a founding member of an organization having as its mission the promotion and strengthening of the institution of healthy marriage in his county. He presently serves as vice chair of the organization and as chair of the organization's legal/legislation subcommittee. The organization is made up of leaders from all aspects of the community, including clergy, civic volunteers, counselors, and representatives of agencies that provide services to families in crisis, including the National Children's Advocacy Center, the Family Services Center and a Crisis Services Center.

The goals of the organization in question are stated to include increasing the number of stable, healthy marriages through providing thorough premarital education; decreasing the high divorce rate in the county; increasing community awareness of the organization; increasing public awareness of the need for marital education, a growing marriage movement and the availability of resources; and increasing access to marriage resources through coordinating existing resources, acting as a clearinghouse of information on marriage resources, and facilitating the development of new and affordable programs

to meet the needs of the population.

The judge wishes to continue to participate in the work of the organization so long as this does not conflict with the requirements of the Canons of Judicial Ethics. The judge does not believe that his work with the organization adversely influences or inhibits him in any way in handling the cases over which he presides.

#### DISCUSSION

Canon 5B states 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." It further states that a judge may serve as an officer, director, trustee, or nonlegal advisor of a charitable or civic organization 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 Commission assumes that the proposed

activity would not be so time consuming as to interfere with the proper performance of the judge's judicial duties. No information has been provided that suggests there might be a conflict with any of the three listed subsection of Canon 5B. The two areas of concern that are apparent from the facts presented are whether the judge's participation would reflect adversely upon his impartiality or would involve acting as a legal advisor.

In Advisory Opinion 87-293, the Commission decided that a judge whose duties included sitting in preliminary hearings and adjudicating misdemeanor charges involving child abuse offenses was prohibited by Canon 5B from serving as an officer or member of the board of directors of a child advocacy center. The Commission found the center's involvement in the investigation and prosecution of child abuse complaints would automatically reflect adversely on the judge's impartiality in cases of alleged child abuse. The Commission also found that, under these circumstances, the judge's impartiality might reasonably be questioned under Canon 3C(1) and, therefore, the judge would be required to recuse himself in all child abuse cases in which the center was involved.

In Advisory Opinion 87-304, the Commission considered a request for an opinion whether a circuit judge was permitted by the canons to serve as a member or as the chairman of the board of directors of a private non-profit corporation whose primary purpose was to formulate and implement strategies for education and prevention of drug and alcohol abuse among youth. A primary objective of the corporation was to promote an atmosphere in which young people could mature with good physical and mental health in a community committed to a drug-free environment. Other objectives were to provide information on drug and alcohol among youth, provide educational programs and services for the community, encourage the community to address the problems of drug and alcohol abuse among youth, obtain funding for the

corporation's endeavors, and promote a community for drug-free youth. The Commission concluded that the proposed service was permissible, but that the judge should be ever mindful of the provisions of Canon 5 and, if at any time a question arose concerning whether the judge's participation conflicted with the provisions of this canon, the judge should cease his participation.

In Advisory Opinion 02-804, the Commission addressed proposed service by a juvenile court judge on the board of directors of the Alabama Foster & Adoptive Parents Association. The Commission did not believe that service on this board would necessarily create an adverse reflection on the judge's impartiality, but thought it 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 was 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 Commission advised the judge to examine the specific activities of the association and its board, noting that, as the Commission had written in Advisory Opinion 89-389, a judge "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."

A judge's role is that of a neutral arbiter. The canons, as a whole, recognize the necessity of preserving judicial impartiality in both fact and appearance. Canon 2A requires, *inter alia*, that a judge respect the law and conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. Public confidence in the integrity and impartiality of the judiciary is undermined when a judge's participation in civic or charitable activities results in an identification with one side in cases the judge hears, or in a perception that the judge does not respect or will not apply

the law.

Based on the current stated goals of the organization in question, it does not appear to the Commission that the judge's continued participation would create an adverse reflection on his impartiality. However, like the association considered in Advisory Opinion 02-804, it is possible that specific activities of the organization might create such a reflection and, thus, that the judge should not participate in those activities. In addition, the judge should not refer litigants to the organization or discuss it with litigants.

The Commission also notes that the goals of an organization may evolve over time in a way that makes continued service on an organization's board inappropriate. As the Commentary to Canon 5B(1) states, "The changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to re-examine the activities of each organization with which he is affiliated to determine if it is proper for him to continue his relationship with it."

Finally, the judge should satisfy himself that his service as the chair of the legal/legislation subcommittee of the organization does not entail acting as a legal advisor to the organi-

zation. Such service is expressly prohibited by Canon 5B.

It is the opinion of the Commission that the judge may continue serving in a leadership position of a civic organization devoted to promoting and strengthening the institution of healthy marriage in his community so long as such service complies with the requirements of Canon 5B.

#### REFERENCES

Advisory Opinions 87-293, 87-304, 89-389 and 02-804.

Alabama Canons of Judicial Ethics, Canon 2A, 3C(1), 5B and Commentary to 5B(1).

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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).