

JUDICIAL INQUIRY COMMISSION

DATE ISSUED: March 9, 2007

ADVISORY OPINION 07-881

A JUDGE'S RESPONSIBILITIES REGARDING THE JUDGE'S SPOUSE'S CHARITABLE FUND-RAISING ACTIVITIES

ISSUE

Do the Canons charge the judge with specific responsibilities in regard to charitable fund-raising activities of the judge's spouse? **Answer:** Yes.

FACTS

The judge's spouse will be one of three chairpersons for a charity's campaign to raise at least \$50 million, targeting individuals who can give \$1 million each. As a primary public spokesperson and chief executive of the campaign, the judge's spouse will directly solicit donations and recruit other volunteers, and her fund-raising activities will be widely publicized.

DISCUSSION

The Alabama Canons of Judicial Ethics are directed to judicial conduct and do not preclude or limit independent charitable fund-raising activities by a judge's spouse. Preamble, Alabama Canons of Judicial Ethics (the Canons are "those principles which govern the conduct of members of the judiciary," i.e., "a Code for judges and a declaration of that which the people of the State of Alabama have a right to expect of them"). Cf. Alabama Advisory Opinion 82-146 (the Canons do not prohibit independent political activities by a judge's spouse).

Although a judge's wife is "an independent person with the right to pursue personal interests, [the judge has] an obligation to take steps to ensure the appearance as well as the reality of her independence and of his

impartiality." In the Matter of Castellano, 889 P.2d 175, 184 (N.M. 1995). That obligation arises particularly from Canons 2C and 5B. Canon 2C directs, "A judge . . . should not lend the prestige of his office to advance the private interest of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him." Canon 5B provides that a judge may participate in only "charitable activities that do not reflect adversely upon his impartiality or interfere with the performance of his judicial activities," and section (2) of that canon prohibits the judge's permitting the use of the prestige of his office for fund-raising activities. See also generally Canon 1.

More specific restraints arising from these Canons are based on the particular circumstances presented to the judge. The Commission bases this advisory opinion on the following facts and assumptions: the anticipated individual donations will be substantial, the pool of targeted donors is small, the campaign will be widely publicized, the judge's wife's solicitations will most likely occur in one-on-one situations, and some of the potential donors may be lawyers or possible litigants who could come before the judge in the future.

In keeping with the Canons' restrictions under the particular circumstances here, the judge should refrain from participating, directly or indirectly, in the spouse's described fund-raising activities and should not in any way be identified with the fund-raising campaign or the soliciting organization.

Under such facts, the judge should not attend any campaign event where his attendance could be reasonably construed as lending the

prestige of his judicial office to support the campaign, impairing his impartiality, or possibly coercing donations. See generally Arizona Judicial Advisory Opinion 00-06; Indiana Advisory Opinion 1-96. See, e.g., Alabama Advisory Opinion 98-712 (a judge may not serve on a host committee for fund-raising banquets when duties include serving as host at a banquet table to help develop relationships). Cf. Alabama Advisory Opinion 06-856 (a judge may not solicit funds from a person or entity who is regularly a party to proceedings in the judge's court).

In addition, the judge should not permit the use of his name or title in any component of the fund-raising campaign, including any reference to his wife by his name (i.e., Mrs. John Doe). See, e.g., Alabama Advisory Opinion 96-596 (a judge should not be listed as a judge on the invitation to a fund-raising dinner (one of a series to be held in various homes) hosted by the judge and his spouse, and he is discouraged under the Canons from holding the dinner in their home).

Finally, the Commission finds that, under the facts submitted, particularly given the size of the solicitations by the judge's spouse in the described campaign, the judge should disqualify himself from any matter before him should he know that a party had either made or refused to make a significant donation to the campaign. These circumstances present an instance where the judge's "impartiality might reasonably be questioned" under the general provision of Canons 3C(1). This disqualification is not subject to remittal under Canon 3D.

REFERENCES

Alabama Canons of Judicial Ethics, Preamble and Canons 1, 2, 3C(1), 3D, 4, 5B, and 5B(2)

Alabama Advisory Opinions 06-856, 98-712, 96-596, and 82-146

In the Matter of Castellano, 889 P.2d 175, 184 (N.M. 1995)

Arizona Judicial Advisory Opinion 00-06

Indiana Advisory Opinion 1-96

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.