

# JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 07-885

EXTRA-JUDICIAL ACTIVITIES – LETTER RECRUITING MALE COMMUNITY LEADERS TO PUBLICLY DENOUNCE DOMESTIC VIOLENCE AGAINST WOMEN AND ENDORSING A MANUAL ON DOMESTIC VIOLENCE IN THE WORKPLACE

## ISSUE

May a presiding circuit judge sign a letter to male leaders of his community encouraging them to join and support “Men Against Domestic Violence” and endorsing a manual for businesses’ human resources departments?

**ANSWER:** No.

## FACTS

A presiding circuit judge has submitted to the Commission a proposed letter to be sent over his signature as well as the signatures of others (unidentified) to “a select group of [their] community’s male leaders.” In the letter, the signatories declare they are “taking a stand against domestic violence” and need “men to tell other men that battering women will not be tolerated in [their] community.” Although the letter does not solicit funds, the judge interprets it as encouraging the recipients to join the organization “Men Against Domestic Violence.” It asks the recipients (1) to attend a men’s breakfast, cosponsored by two non-profit organizations, to hear a nationally recognized speaker and author of *The Macho Paradox: Why Some Men Hurt Women and How All Men Can Help*; (2) to ask the human resources departments of their businesses “to learn about adapting and implementing best practices for workplace safety” by reviewing *Domestic Violence in the Workplace: A Guide for*

*Employers*, a manual developed in collaboration with the Alabama Coalition Against Domestic Violence, and by attending the Governor’s Conference on Domestic Violence; and (3) to make a public statement with the other attendees of the breakfast that they and their organizations will not tolerate domestic violence.

## DISCUSSION

A judge’s participation in extra-judicial activities is governed by Canon 5, which provides, “A judge should regulate his extra-judicial activities to minimize the risk of conflict with his judicial duties.” *See also* Canon 3 (“The judicial activities of a judge take precedence over his other activities.”) Canon 5B further provides, “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.” *See also* Canon 2A (“A judge ... should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.”); Canon 3 (“A judge should perform the duties of his office impartially ...”). “Paramount in ... Canon [5] is that the civic activity neither reflect adversely upon the judge’s impartiality nor interfere with the proper performance of his judicial duties.” Advisory Opinion 87-293.

While it may be permissible for a judge to publicly take a stance against crime, the judge’s direct specification of a particular crime, especially limited to one gender, would reflect adversely upon the judge’s impartiality. For example, a judge’s impartiality might reasonably be questioned where a man, being prosecuted for a violent crime against a

female, claims self defense; or where a judge is sentencing a male abuser.

Although judges are opposed to domestic violence in any form, a judge should not give the appearance that he has adopted or supports an organization's agenda that is not gender-neutral. In addition, he should not give the appearance of alignment with an advocacy organization for domestic violence victims. *See, e.g.*, Advisory Opinion 00-750 (a circuit judge should not give a speech at a "Take Back the Night" rally that expresses favor and appreciation to those who are proclaiming that they are taking back the nights in the city to make the city safe against sexual assault and will not remain quiet about the issue; such a speech would reflect adversely on the judge's impartiality in cases involving sexual assaults, given the ambiance of the event and the partisan activities of the event's sponsoring organization). Such appearance of impartiality could require the judge to disqualify himself, which in turn would potentially create interference with the performance of judicial duties through increased recusals.

Moreover, Canon 2C's provision that a judge should not lend the prestige of his office to advance the private interests of others would prohibit the use of the prestige of the judicial office to garner support for such activity and to encourage membership, particularly the use of the prestige of the office of a presiding judge in such a high-profile manner. *See* Advisory Opinion 83-179 (a judge is prohibited from lending the prestige of his office to an organization's solicitation of membership).

The Commission's other paramount concern is that, by endorsing the employer's guide to domestic violence in the workplace, the judge

is acting as a legal adviser, albeit indirectly. The employer's guide contains sections on an employer's legal responsibilities, sample policies and guidelines, and sample safety plans – all issues that could arise in litigation. Canon 5B specifies that, in his interaction with civic and charitable organizations, a judge may serve as a "nonlegal adviser."

Regardless of whether the judge's imprimatur of the manual would constitute giving legal advice, it would still give the appearance of the judge's acting as a legal adviser on issues that could come before the courts for adjudication. *See, e.g.*, Advisory Opinion 02-804 (serving on the board of Alabama Foster and Adoptive Parents Association might create a reflection of impartiality, in part, because the organization's activities promote positions on issues the judge would be called upon to decide).

While the goal of ending domestic violence is laudable and the organizations that are striving toward that goal are exemplary, a judge should refrain from signing the proposed letter.

#### REFERENCES

Advisory Opinions 02-804, 00-750, 87-293, and 83-179.

Alabama Canons of Judicial Ethics, Canons 2A, 2C, 3, 5, and 5B.

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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.