

## JUDICIAL INQUIRY COMMISSION

DATE ISSUED: November 18, 2011

ADVISORY OPINION 12-909

### EXTRAJUDICIAL ACTIVITY – ACTOR IN DINNER-THEATER FUNDRAISER FOR CHILD-ADVOCACY CENTER

judge's extrajudicial activities may adversely affect public perception of the judiciary's integrity and independence primarily in three ways:

#### ISSUE

May a judge assigned primarily to domestic relation cases participate as an actor in the annual dinner-theater fundraiser for the county child-advocacy center? Answer: No.

The activity may give the appearance of partiality or favoritism.

The activity may interfere with the proper performance of judicial duties.

#### FACTS

A circuit judge who has recently been elected and assigned primarily to domestic relations cases has, for twelve years, been an actor in the annual dinner-theater fundraiser for the county child-advocacy center. The center, in assisting in the prosecution of sexual and physical abuse of children, has a "multidisciplinary child-abuse investigative team" consisting of the center's staff, local police and sheriff's deputies, a nurse, and DHR representatives to investigate and assist the district attorney.

The activity may constitute a "collateral misuse of the judicial office," e.g., trading on the dignity, power, and prestige of the judicial office.

Canon 5B. *See generally* Raymond J. McKoski, "Charitable Fund-Raising by Judges: The Give and Take of the 2007 ABA Model Code of Judicial Conduct," 2008 Mich. St. L. Rev. 769, 779 - 82 (2008).

While the inquiring judge may consider his participation would be indirect, have no relationship to the judicial office, and not raise any concerns about coercion or exploitation of the judicial office, his involvement would present a reasonable question of his impartiality because the center's mission and activities are advocacy-oriented. Thus, it is prohibitive under Canon 5. See also Canon 2A (a judge should conduct himself at all times in a manner that promotes public confidence in the impartiality of the judiciary).

The content of the fundraiser plays is not related to the child-advocacy center's work. The inquiring judge would not sell tickets to or advertisements for the play, solicit funds, or directly endorse the child-advocacy center. His status as a judge would not be used in any manner to promote the event. The seven performances attract 2,500 attendees and have been a drawing point for statewide and local politicians.

This advice follows the Commission's Advisory Opinion 87-293, where a district judge, who prior to assuming the bench had been involved in fundraising for the local child-advocacy center, inquired whether he

#### DISCUSSION

"A judge should uphold the integrity and independence of the judiciary." Canon 1. A

could serve as an officer or member of the center's board of directors. The Commission advised the judge that, because he presides in preliminary hearings and prosecution of misdemeanor child-abuse offenses, his service on the center's board would "automatically" reflect adversely on his impartiality in those cases. Moreover, such service would require his recusal, pursuant to Canon 3C(1), in all child abuse cases in which the center is involved, thereby interfering with the proper performance of his judicial duties. *See also* Canon 5B(1) (a judge should not "serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization or institution . . . 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"; Advisory Opinion 89-389 (a judge may serve on the advisory board of his local child-advocacy center, which would be expected to fundraiser for the center, if his service would not be restricted by Canon 5; the judge must examine his assigned judicial duties and his anticipated participation on the board and, if it is likely his service would reflect adversely on his impartiality or interfere with the performance of his judicial duties, he must not serve).

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.

Advisory Opinion 06-871.

Based on the foregoing, the judge's inquiry does not require discussion of any implication of Canon 2C ("A judge should not . . . lend the prestige of his office to advance the private interests of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him.").

#### REFERENCES

Advisory Opinions 06-871, 89-389, 87-293.

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

Raymond J. McKoski, "Charitable Fund-Raising by Judges: The Give and Take of the 2007 ABA Model Code of Judicial Conduct," 2008 Mich. St. L. Rev. 769, 779 - 82 (2008).

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 18 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.