

Judicial Inquiry Commission

800 SOUTH MCDONOUGH STREET
SUITE 201
MONTGOMERY, ALABAMA 36104

January 23, 1985

The Judicial Inquiry Commission has considered your request for an opinion concerning whether under the Alabama Canons of Judicial Ethics a juvenile court judge may act as a foster parent for children or a particular child in the custody of the Department of Pensions and Security. As further facts, you state that the juvenile court judge became acquainted with the child when the child appeared in the juvenile court as a dependent or neglected child. The child is now and has been in the custody of the State for a number of years. It further appears that there is very little likelihood that the child will ever be able to return to parental custody.

In preparation for becoming a foster parent the judge, who previously handled almost all Pensions and Security dependency and neglect cases, has with the consent of another juvenile judge swapped case assignments with that judge, who handled delinquency cases. Therefore, it is not now likely that Pensions and Security personnel, who supervise the foster care program, will frequently appear before the judge. Also, in anticipation of the judge becoming a foster parent, the Department of Pensions and Security, which usually supervises foster care homes, has requested AGAPE, an independent private organization, to supervise foster care in this particular case. AGAPE has accepted. Therefore, the judge and the Department of Pensions and Security will have no dealings with each other and no supervisory relationship will exist.

In the present case, it is the opinion of the Commission that a juvenile court judge may serve as a foster parent without violating the Canons of Judicial Ethics. The conduct of the judge in this instance is governed in particular by Canon 5 and Canon 3C(l) of the Canons of Judicial Ethics. Canon 5 provides that:

“A Judge Should Regulate His Extra-Judicial Activities To Minimize the Risk of Conflict with His Judicial Duties.”

Canon 3C(l) governs disqualification and provides that a judge should disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

In the present case, the Commission was initially concerned that it would appear to a reasonable man, knowing all of the facts and circumstances known to the judge, that the judge could not be impartial in hearing Department of Pensions and Security cases where his home was under their supervision as a foster home. The Commission was concerned that this relationship could cause the judge's disqualification in too many cases and therefore fall within the purview of Canon 5.

This concern is remedied however by the fact that the judge's home will be supervised, not by the Department of Pensions and Security, but by AGAPE, a totally independent organization. The judge will therefore not maintain any sensitive extra-judicial relationship with a constant litigant before his court.

The Commission should not be understood as approving the judge's action of withdrawing from all cases involving Pensions and Security. See Canon 5. However, we assume in view of AGAPE's involvement the judge will continue to be involved with appropriate Pensions and Security cases.

Yours very truly,

JUDICIAL INQUIRY COMMISSION