

## Judicial Inquiry Commission

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This is in response to your request for an advisory opinion from the Judicial Inquiry Commission. Your question is whether you, as a part-time municipal judge, may invite the Daphne and Fairhope Police Departments to your cookout.

You have provided the following circumstances:

“Since 1987 I have been the Municipal Prosecutor for the City of Daphne. From time to time I have attended social events involving the Police Department of Daphne in an effort to keep a good relationship with the Department and its officers. On one particular occasion I hosted a bar-b-que cookout for the department. This was approximately two years ago. I had intended to make this an annual event, however, some complications occurred in 1992 and I was unable to do so. I am intending to renew the cookout on an annual event this fall. The question arises in that in November, 1992, I was appointed as Municipal Judge in the City of Fairhope. I also reside and practice law in Fairhope. My question is whether there is a problem with me including the Fairhope Police Department in this cookout. I know that my relationship with Fairhope Department and Daphne Department are different and need to remain that way. However, because I know some of the Fairhope Police Officers and have known them personally since before I went on the bench, I do not wish to appear that I am avoiding inviting them while I have most of the Daphne Department present. If there is not a problem, I would like to include the Fairhope Department. However, if there is, I would like to know in advance so that I can explain to them why I am unable to include them at the cookout.”

It is the opinion of this Commission that as a municipal judge you should not host a cookout to which you extend an invitation to any municipal police department.

Canon 1, Alabama Canons of Judicial Ethics states in part that a judge should “observe high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.” The Commentary to Canon 2 include the following admonition: “A judge must avoid all impropriety and appearance of impropriety. He must expect to be the subject of constant public scrutiny. He must, therefore, accept restrictions on his conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.”

Canon 2C provides: "A judge should not allow his . . . social . . . relationships to influence his judicial conduct or judgment. He 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." A reading of the provisions of Canons 1, 2, and 3 makes clear that Canon 2C includes the admonishment that a judge should not engage in conduct which tends to make it appear that his social relationships influence his judicial conduct or judgment. See Advisory Opinion 78-35 (judge should not become dues paying honorary member of the Fraternal Order of Police).

Here, the hosting of a cookout on an annual basis for a police department lends the appearance that you are attempting to "curry favor" with a special interest group. In municipal court, the whole case often turns on whether the judge believes the police officer or the defendant. The hosting of an annual cookout under the circumstances presented here would provide ample reason to question the judge-host's impartiality. Such conduct, no matter how innocently conceived, provides reasonable ground to assume that the judge would automatically give more credence to the testimony of a police officer than that of any other witness. "Judges have been charged with bias because of extrajudicial familiarity with a witness." J. Shaman, S. Lubet, J. Alfani, Judicial Conduct and Ethics 126 (1990).

We note that this cookout is not an established "annual" event and has been held on only one occasion in the past. On that occasion, you were the city prosecutor. This is something you are intending to establish on an annual basis after you have been appointed municipal judge.

You indicate that the police departments of both municipalities are relatively small and that many of the officers are your personal friends; therefore, in order to avoid hurting any officer's feelings, it is necessary to invite the entire police department. However, it is that very smallness of the municipalities and police departments which fosters the existence of the appearance of impropriety and "done deals" between the police department and the municipal judge.

While friendships among municipal judges and police officers are common and even desirable, "when the association exceeds 'what might reasonably be expected' in light of the associational activities of an ordinary judge . . . the unusual aspects of a social relation may give rise to a reasonable question about the judge's impartiality." United States v. Murphy, 768 F. 2d 1518 (7th Cir. 1985) (treating relationships between judges and attorneys).

The importance and significance of the position of municipal judge cannot be underestimated. "Far more Alabama citizens appear as complainants or defendants in municipal courts than in any other courts. Consequently, most citizens get their first impressions of the Alabama Judicial System in a municipal court." T. Bishop, Municipal Courts preface (1991).

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It is essential that the public's impression of the municipal judge be that of a competent, professional, fair, and impartial judge, without bias or prejudice toward any party.

This advisory opinion has been considered by and is the opinion of the entire Commission.