

Judicial Inquiry Commission

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The Judicial Inquiry Commission has considered your request for an opinion of the Commission concerning whether there is a conflict between a position as an elected member on the state board of the Alabama Farmer's Federation and ALFA Insurance and duties as Judge of Probate and Chairman of a county commission. This Commission may only render opinions concerning whether a certain specified action may constitute a violation of the Canons of Judicial Ethics. Rule 17, Judicial Inquiry Commission Rules. Thus, the Commission can only respond with respect to whether it might be a violation of the Canons of Judicial Ethics for a probate judge to also serve as an elected member on the state board of the Alabama Farmer's Federation and ALFA Insurance.

Alabama has not adopted Canon 5C(2) of the American Bar Association Model Code of Judicial Conduct of 1973 which provides that a judge "should not serve as an officer, director, manager, general partner, advisor or employee of any business." See J. Shaman, S. Lubet, J. Alfani, Judicial Conduct and Ethics 177-188, 521 (1990). Neither has Alabama adopted Canon 4D(3) of the Model Code of 1990 which provides that, with limited exceptions, "[a] judge shall not serve as an officer, director, . . . of any business entity." Judicial Conduct at 549.

The Alabama Canons of Judicial Ethics contain no such blanket prohibition. Under part D of Canon 5, it is provided that a judge should not serve as a fiduciary

"if such will interfere with the proper performance of his judicial duties. As a fiduciary, a judge is subject to the following restrictions:

- (1) He should not serve if it is likely that as a fiduciary he will be engaged in proceedings that would ordinarily come before him.
- (2) While acting as a fiduciary, a judge is subject to the same restrictions on financial activities that apply to him in his personal capacity."

Canon 5C sets forth the restrictions on financial activities of judges, and states in pertinent part:

- (1) A judge should refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, or exploit his judicial position.

- (2) Subject to the requirements of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity including the operation of a business.
- (3) A judge should manage his investments and other financial interests to minimize the number of cases in which he is disqualified.

Therefore, it is the opinion of this Commission that a probate judge may hold a position as an elected member on the state board of the Alabama Farmer's Federation and ALFA Insurance if he can do so within the constraints of Canons 5C and 5D. Of course, judicial activities take precedence over other activities (Canon 3), and the judge is disqualified from presiding in any proceeding in which the Alabama Farmer's Federation or ALFA Insurance is a party. See Canons 3C(l)(c), 3C(l)(d)(i), and 3C(3)(c). However, such disqualification can be remitted pursuant to the terms of Canon 3D.

The matter of compensation is covered in Canon 6:

A judge may receive compensation and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by these canons, if the source of such payments does not give the appearance of influencing the judge in his judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

A. **COMPENSATION.** Compensation should not exceed a reasonable amount, nor should it exceed what a person who is not a judge would receive for the same activity.

B. **EXPENSE REIMBURSEMENT.** Expense reimbursement should be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by his spouse. Any payment in excess of such an amount is compensation.

This advisory opinion has been reviewed and approved by the Judicial Inquiry Commission and is the opinion of the Commission.