

Judicial Inquiry Commission

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September 4, 1998

The Judicial Inquiry Commission has considered your request for an advisory opinion concerning whether a judge may serve on the board of directors of a certain local charitable/environmental organization in light of the admonition in Canon 5B(1) that a judge should not serve as a director of a charitable or other civic organization if the organization "will be regularly engaged in adversary proceedings in any court." It is not likely the organization in question will be engaged in proceedings that would come before the judge. You state that the organization was not formed specifically for the purpose of engaging in litigation, but rather to bring to the public's attention matters involving environmental safety and health hazards. However, the organization is currently engaged in a lawsuit that it filed against the Alabama Department of Environmental Management involving the issuance of air permits, it has taken administrative appeals from the issuance of two other air pollution permits, and it may, in the future, be involved in further challenges to ADEM's regulatory scheme of granting air or water pollution permits.

It is the opinion of the Commission that a judge may not serve on the board of directors of the particular organization in question.

The Commission has not previously addressed the meaning of the Canon 5B(1) phrase "will be regularly engaged in adversary proceedings in any court." It has been suggested that similar language in Section 4C(3)(a) of the Model Code of Judicial Conduct (1990) ("will be engaged frequently in adversary proceedings") would prohibit most judges from serving on the board of directors of an organization such as the Sierra Club that exists for broader purposes than litigation but which frequently appeals to the courts in support of its stated goals. J. Shaman, S. Lubet, and J. Alfini, Judicial Conduct and Ethics, § 9.12, pages 297 - 298 (2nd ed. 1995). It appears to the Commission that the organization at issue will be regularly engaged in adversary proceedings in courts.

The Commission also believes that Canon 2C is relevant to your inquiry. In pertinent part, this canon states that a judge should not lend the prestige of his office to advance the private interests of others. The Commission is concerned that your public involvement in the activities of the particular organization at issue may be perceived as lending the prestige of your judicial position to enhance the credibility of the organization.

Yours truly,

JUDICIAL INQUIRY COMMISSION