

# JUDICIAL INQUIRY COMMISSION

DATE ISSUED: SEPTEMBER 30, 1999

ADVISORY OPINION 99-738

## SERVING ON BOARD OF DIRECTORS OF ORGANIZATION HOLDING COURT REFERRAL OFFICER CONTRACT

### ISSUE

May a municipal court judge continue as a member of the board of directors of a substance abuse council that holds the contract for court referral officers in his or her court's jurisdiction? **Answer:** Not if the council also is one of the providers of service to which the court referral officer may make referrals.

### FACTS

A municipal court judge serves on the board of directors of a substance abuse council. The board usually attends a spring conference at Gulf Shores for which the judge receives three days lodging and some meals. As a member of the board, the judge is eligible to participate in the board's group medical insurance. He pays the full premium for this insurance coverage.

The judge's judicial duties include hearing DUI and other substance-abuse related cases which require referral of defendants to a court referral officer. The substance abuse council employs the court referral officers in the judge's jurisdiction.

The court referral program was established in the Mandatory Treatment Act of 1990, ALA. CODE §12-23-1, *et seq.* (1975). Under this program, court referral officers evaluate the use of alcohol and/or drugs by defendants convicted of alcohol and drug-related offenses, and recommend and/or refer those defendants for education or treatment and monitoring for court-ordered compliance. The Administrative Office of Courts (AOC) contracts with entities to conduct court referral programs, and all such

contracts are at the pleasure of the Administrative Director of Courts. ALA. CODE §12-23-4 (1975). Court referral officers work "under the general supervision and direction of the Administrative Director of Courts and the judges of the circuit to which they are assigned." *Id.* They are compensated from moneys in the court referral officer trust fund and/or federal grants designated by AOC for this purpose. *Id.*

### DISCUSSION

Canon 5B provides that a judge may participate in civic and charitable activities if they do not "reflect adversely upon his impartiality or interfere with the performance of his judicial duties."

The Commission does not find a violation of the Alabama Canons of Judicial Ethics based on the judge's service on the board of directors of an organization that holds the contract for court referral officers in his jurisdiction. The court referral officer functions as a quasi-arm of the court. However, when the organization in question also is among the service providers from which the court referral officer may make recommendations to the judge, the judge's service on that organization's board reflects adversely on the judge's impartiality.

The substance abuse council on whose board the judge sits conducts legally mandated driving schools for convicted DUI offenders, and all referrals generate fees for the council. While it is mandatory that convicted defendants be referred, the judge has discretion to determine which level of DUI school the defendant will attend. Different levels require different fees. Because the judge may exercise such discretion, the Commission previously has advised that a lease arrangement by a judge who jointly owned a building which a

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Regional Council on Alcoholism was interested in leasing would be prohibited by the Canons. *See* Advisory Opinion 88-339.

Although the judge in the instance now before the Commission would have no financial interest in the operation of the substance abuse council, he would as a member of its board nevertheless be interested in the council's success. Thus, his service on the board could reasonably raise questions about his impartiality in dealing with offenders before him.

#### REFERENCES

Alabama Advisory Opinion 88-339.

Alabama Canons of Judicial Ethics, Canon 5B.

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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 17 of the Rules of Procedure of the Judicial Inquiry Commission. For further information, you may contact the Judicial Inquiry Commission, 800 South McDonough Street, Suite 201, Montgomery, Alabama 36104; tel.: (334) 242-4089; fax: (334) 240-3327; e-mail: [jic@alalinc.net](mailto:jic@alalinc.net).