JUDICIAL INQUIRY COMMISSION

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SERVICE ON THE BOARD OF THE AMERICAN ASSOCIATION OF PHYSICIAN SPECIALISTS

ISSUE

May a judge serve as the public consumer member of the board of the American Association of Physician Specialists, Inc.?
Answer: No, such service would reflect adversely on the judge's impartiality and fail to minimize conflict with judicial duties.

FACTS

A circuit court judge has been asked to serve as the public consumer member of the board of the American Association of Physician Specialists, Inc., which the judge understands to be a nonprofit corporation. The bylaws of the association provide that the board may appoint a public consumer annually for the purpose of providing input to the board from a layman's perspective relative to the board's policies and decisions. The board meets twice annually. The association has affiliated Boards of Certification which provide certifications to physicians in various areas of medical practice, *e. g.*, dermatology, radiology, and surgery. The judge particularly inquires whether service on the board of the association would create an appearance of partiality toward the medical community.

DISCUSSION

A judge's extrajudicial activities are governed by Canon 5, which generally requires a judge to regulate such activities "to minimize the risk of conflict with his judicial duties." Subsections of Canon 5 cover various types of extrajudicial activities. From the facts presented, it appears that Canons 5B, 5C, and/or 5D may apply.

Canon 5B covers civic and charitable activities, allowing participation that does "not reflect adversely upon [the judge's] impartiality or interfere with the performance of his judicial duties." This canon permits a judge to

> serve as an officer, director, trustee, or nonlegal advisor of an educational, religious, charitable, fraternal, or civic organization or institution *not conducted for the economic or political advantage of its members*, subject to the following limitations:
>
> > (1) A judge should not serve if it is likely that the organization or institution will be engaged in proceedings that would ordinarily come before him or will be regularly engaged in adversary proceedings in any court.
> >
> > (2) It is desirable that a judge not solicit funds for any educational, religious, charitable, fraternal, or civic organization or institution, or use or permit the use of the prestige of his office for that purpose, but he may be listed as an officer, director, or trustee of such an organization or institution.
> >
> > (3) A judge should not give investment advice to such an organization or institution, but he may serve on its board of directors

> or trustees even though it has the responsibility for approving investment decisions.

(Emphasis added).

Canon 5D governs fiduciary activities. It provides that a judge should not serve as a fiduciary if such service "will interfere with the proper performance of his judicial duties," specifying two other restrictions to service as a fiduciary:

> (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 covers financial activities, as follows:

> (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.

A common thread running through the foregoing subsections of Canon 5 is the prohibition the inquiring judge recognizes against participation in activities that reflect adversely on a judge's impartiality. A judge "must make every effort to avoid giving the appearance of a predisposition in matters that are likely to come before him and to avoid participation in [activities] which may otherwise cause his disqualification in such matters." Advisory Opinion 89-389.

The organization in question is involved in the certification of physicians in various areas of medical practice. In establishing a relative standard of care for health care providers in actions for injuries or wrongful death, the Medical Liability Act of 1987, as amended in 1996, relies in various ways on the fact of certification by "an appropriate American board." ALA. CODE §6-5-548 1975 (Supp. 1999).

In light of the types of cases and issues that ordinarily come before a circuit judge, it is the opinion of the Commission that the inquiring judge may not serve as the public consumer member of the board of the American Association of Physician Specialists, Inc. Such service would create an adverse reflection on the judge's impartiality and fail to minimize conflict with judicial duties.

REFERENCES

Alabama Advisory Opinion 89-389.

Alabama Canons of Judicial Ethics, Canons 5, 5B, 5C, and 5D.

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.