JUDICIAL INQUIRY COMMISSION

DATE ISSUED: JANUARY 26, 2004 ADVISORY OPINION 04-831

SERVING ON BOARD OF ORGANIZATION THAT PROVIDES SERVICES UPON REFERRAL FROM THE JUDGE'S COURT; USE OF TITLE AND INVOLVEMENT IN FUND RAISING

ISSUES

I. May a judge serve on the board of an organization that provides services to clients upon referral from the judge's court? **Answer:** Yes, under the facts presented.

II. May the judge use his judicial title in connection with such service? **Answer:** The judicial title should not be used to advance the interests of the organization and, thus, should not be used in connection with fundraising activities.

III. May the judge contribute money to such an organization? **Answer:** Yes.

IV. May the judge seek funding sources for such an organization? **Answer:** Yes, but he should not use his judicial title or position in such activities nor solicit funds from a person or entity who is regularly a party to proceedings in his court.

V. If the judge is a member of the board of such an organization, may he make suggestions to the board, as a director and an attorney, as to potential funding sources? **Answer:** Yes.

FACTS

A part-time municipal judge has been asked to serve on the board of a local family support center. The center is a non-profit agency that is the sole provider in his jurisdiction for such services as G.E.D., adult education, parenting classes and domestic violence monitoring. His court refers "clients" to the center, as do other courts in the county.

The center's board of directors has responsibilities involving employee review, approval of expenditures above a certain level, entering into contracts, and borrowing and raising money for the programs the center offers. The board makes no decisions regarding staffing or personnel direction. It does not act on, monitor, supervise or receive reports on individual clients at the center. The center does not receive funding or remuneration of any sort from or as a result of referrals from the judge's court. The center relies solely on grants, donations and other gifts.

DISCUSSION

Canon 5B provides generally 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." It then states:

> A judge may 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:
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> > (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.
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> > (2) It is desirable that a judge not solicit funds for an 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.
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> > (3) A judge should not give invest-

> ment 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.

In Advisory Opinion 96-630, the Commission decided that service of the inquiring judge as chairman of the board of directors of a particular program was permitted under the canons in light of the surrounding circumstances. Significantly, referrals to that program did not generate fees for the program, there was no competing facility from which comparable services were available, and the judge would not be involved in fund raising or in day-to-day operation of the program or supervision of staff providing counseling, but rather would be involved in broad areas such as planning for needs and general program direction.

In Advisory Opinion 97-678, the Commission found that, under the facts presented, the canons permitted a judge to sit on the board of directors of a youth facility to which the judge referred juveniles who came before his court. Most significantly, the facility was a non profit organization, the judge served without remuneration, the court was allotted a limited number of beds at the facility, the facility's funding was not based on the number of clients referred by the judge, and the facility offered rehabilitation opportunities that supplemented and complemented those provided by the Department of Youth Services and was created to fill a void in services not otherwise available in the service area. The Commission decided that the facility in question improved the administration of justice by providing new opportunities for rehabilitation of juvenile offenders that were supplemental to services provided by the Department of Youth Services.

The circumstances in Advisory Opinion 00-767 were similar to those the Commission addressed in Advisory Opinions 96-630 and 97-678. In that opinion, the Commission advised a judge that his continued service on the board of directors of a YMCA that operated an alternative sentencing program for juveniles would not violate the Alabama Canons of Judicial Ethics.

The circumstances in the present case are likewise similar to those addressed in Advisory Opinions 96-630 and 97-678. The family support center provides services not otherwise available locally, and referrals by the judge do not affect center funding. In addition, the judge will not be involved in supervision of clients referred to the center nor of center staff.

It does not appear that service on the center's board will reflect adversely upon the judge's impartiality or interfere with the performance of his judicial duties. Canon 5B. It is not likely that the center will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any other court. Canon 5B(1). Thus, the Commission is of the opinion that service on the board of the family support center at issue is not prohibited by the Canons of Judicial Ethics.

The issue of the use of the judicial title involves consideration of both Canon 5B(2) and the provision in Canon 2C that a judge "should not lend the prestige of his office to advance the private interests of others." In Advisory Opinion 84-216, the Commission held that a judge should not permit his name to be listed along with the title "Judge" on stationery of an educational foundation that he knew would be used for the purpose of soliciting funds because to do so would "permit the use of the prestige of his office for the purpose of soliciting funds." Similarly, in Advisory Opinion 96-596, the Commission advised a judge that his judicial title should not be used in an invitation to a fund-raising dinner since this would permit the use of his office

for the purpose of fund solicitation.

While the canons do not absolutely prohibit a judge from engaging in fund raising for civic or charitable organizations, a judge may not use his judicial position or title in any such activities. A judge's name may be listed as an officer, director or trustee of a civic or charitable organization, but his judicial position or title may not be used in fund-raising activities for the organization. Advisory Opinions 00-753, 01-773 and 03-819.

The Commission finds no provision in the canons that would prohibit or discourage the inquiring judge from making personal financial contributions to the family support center. Likewise, there does not appear to be any restriction placed upon him making recommendations to the center's board as to potential funding sources for the center, or from making general inquiries about the existence of potential funding sources. However, to the extent that actual participation in fund solicitation is envisioned, the following discussion applies:

> While Canon 5B(2) does not absolutely prohibit a judge from participating in fund solicitation, it strongly discourages such activity.
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> > Participation in fund raising presents a danger that the prestige of the judicial office will be used for the solicitation of funds. Advisory Opinions 81-101 and 96-596. It also involves a danger that the person solicited will feel obligated to respond favorably if the judge is in a position of influence or control. Commentary to the Model Code of Judicial Conduct, Canon 4C(3)(b) (1990). A judge who participates in fund raising for a civic or charitable organization must be ever mindful of the provisions of Canons 1 and 2, and must limit such participation so that he or she does not lend the prestige of his or her judicial office to the event or otherwise violate either the letter or the spirit of Canons 1 and 2. Advisory Opinions 83-174, 83-179, 85-242, and 96-596.
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> Advisory Opinions 00-747 and 00-753. A judge's name may be listed as an officer, director, or trustee of a civic organization, but his judicial position or title may not be used in fund-raising activities. Advisory Opinions 84-216, 96-596, 00-753, and 01-773. A judge should not solicit funds from a person or entity who regularly is a party to proceedings in the judge's court. Advisory Opinion 01-773.

Advisory Opinion 03-819.

REFERENCES

Advisory Opinions 84-216, 96-596, 96-630, 97-678, 00-753, 00-767, 01-773, and 03-819.

Alabama Canons of Judicial Ethics, Canons 2C, 5B, 5B(1), and 5B(2).

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, P. O. Box 303400, Montgomery, Alabama 36130-3400; tel.: (334) 242-4089; fax: (334) 353-4043; E-mail: jic@alalinc.net.