

JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 05-853

PUBLISHING SEX CRIME CONVICTIONS

ISSUE

Do the canons of judicial ethics permit a circuit judge to publish in a local newspaper the names, pictures and addresses of persons convicted of sex offenses in his court?

Answer: No.

FACTS

A circuit judge proposes to publish in a local newspaper the names, pictures and addresses of persons convicted of sex offenses in his court. If this is permissible, he further proposes payment of the costs of this publication by the district attorney, and informing the public of this notification plan through the media.

DISCUSSION

The proposed conduct is addressed most specifically in Canon 5C(6), which states that information acquired by a judge in his judicial capacity should not be used or disclosed by him for any purpose not related to his judicial duties.

Judicial duties have not historically included publicizing the identity and residence of persons convicted in the judge's court, nor is such publication intrinsically a judicial function. Rather, this has been recognized as a law enforcement function, enhancing law enforcement agencies' efforts to protect their communities, to conduct investigations, and to quickly apprehend offenders. Ala. Code 1975, §15-20-20.1. Under the procedures established by the Alabama legislature, community notification of sex offenders is provided by the police department or the sheriff, depending on the size of the community, and may also be made by the Department of Public Safety. Ala. Code 1975, §15-20-25.

More generally, the proposed conduct raises

concerns involving two of the overarching principles governing the conduct of the judiciary recognized in the canons of judicial ethics: independence and impartiality.

Canon 1 requires judges to uphold the independence of the judiciary, recognizing that an independent and honorable judiciary is "indispensable to justice in our society," and directing that the provisions in the canons be construed and applied to further this objective. The necessity of impartiality, both in fact and appearance, is recognized throughout the remaining canons. For example, Canon 2A requires a judge to conduct himself at all times in a manner that promotes confidence in the impartiality of the judiciary, Canon 3C(1) requires disqualification of a judge whenever his impartiality might reasonably be questioned, and Canon 4 allows activities to improve the law, the legal system, and the administration of justice only so long as they do not cast doubt on the judge's capacity to decide impartially any issue that may come before him.

In the opinion of the Commission, the dissemination by a judge of information about persons convicted in the judge's court would tend to create an improper perception that the judge and law enforcement work together rather than independently from one another. The situation would move beyond perception to actuality if the costs of publication were paid by the district attorney, but an improper perception would be created even if the district attorney were not financially involved. The notification plan proposed would erode the perception of judicial independence that Canon 1 recognizes as central to proper judicial conduct. *See* Advisory Opinion 03-821 (in which the Commission found an improper appearance of a joint judicial/district attorney operation).

The Commission is also of the opinion that the notification plan proposed would cast doubt on the judge's impartiality, both in sex

offense cases generally and in the specific cases publicized. Since post conviction proceedings ordinarily are heard by the trial judge, this would have a significant detrimental impact on judicial administration.

The New York Advisory Committee on Judicial Ethics addressed a similar inquiry in its Opinion 01-14. The New York judge asked whether it was ethically permissible for his court's web site to contain a link that facilitated transfer to another web site maintained by a Megan's Law advocacy group. The Megan's Law site listed, among other things, registered sex offenders by name and county of residence. Noting that the New York Rules Governing Judicial Conduct require that judges maintain the independence and impartiality of the judiciary, and that the enforcement of Megan's Law and the dissemination of authorized information regarding sex offenders is a function of law enforcement agencies, the Advisory Committee concluded that it was inappropriate for the court to provide the web link. The Committee found that maintaining this link to a group pursuing a law enforcement function "would tend to derogate from the independence of the judiciary and could impair public confidence in the integrity and impartiality of the court."

It is the opinion of the Commission that the canons of judicial ethics do not permit a circuit judge to publish in a local newspaper the names, pictures and addresses of persons convicted of sex offenses in his court.

REFERENCES

Advisory Opinion 03-821.

Alabama Canons of Judicial Ethics, Canons 1, 2A, 3C(1), 4 and 5C(6).

Ala. Code 1975, §15-20-20.1, et seq.

New York Advisory Committee on Judicial Ethics, Opinion 01-14.

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.