



COMMISSIONERS

John H. Watson, Chairman
Lewis G. Odom, Jr., Esq., Vice-Chairman
Russell Jackson Drake, Esq.
J. Harold Sorrells
Raymond L. Bell, Jr., Esq.

STATE OF ALABAMA ETHICS COMMISSION

MAILING ADDRESS

P.O. BOX 4840
MONTGOMERY, AL
36103-4840

STREET ADDRESS

RSA UNION
100 NORTH UNION STREET
SUITE 104
MONTGOMERY, AL 36104



James L. Sumner, Jr.
Director

TELEPHONE (334) 242-2997
FAX (334) 242-0248
WEB SITE www.ethics.alalinc.net

January 10, 2001

ADVISORY OPINION NO. 2000-65

The Honorable M. Donald Davis, Jr.
Mobile County Probate Judge - Elect
Sirote & Permutt
One St. Louis Center, Suite 1000
Mobile, Alabama 36602

Conflict Of Interests/Newly-Elected Probate
Judge Hearing Cases In Which He Served
As Conservator For Mobile County,
Alabama.

The newly-elected Probate Judge of Mobile
County, Alabama, who formerly served as
conservator for Mobile County, must recuse
himself from any involvement or
participation in matters appearing in his
Court in which he formerly served as
conservator.

Conflict Of Interests/Newly-Elected Probate
Judge Reappointing County Conservator
Who Is Associated With The Judge's
Former Law Practice.

The newly-elected Probate Judge of Mobile
County, Alabama, may reappoint, as County
conservator, an associate with a law firm
with which the judge was formerly
associated, as the judge has divested himself
of all interest in the law firm, and it is no
longer a business with which he is
associated.

The newly-elected Probate Judge of Mobile County may hear matters in his Court involving lawyers associated with his former law firm, as he has divested himself of all interest in the law firm, and it is no longer a business with which he is associated.

Dear Mr. Davis:

The Alabama Ethics Commission is in receipt of your request for an Advisory Opinion of this Commission, and this opinion is issued pursuant to that request.

QUESTIONS PRESENTED

- 1) May a Probate Judge hear matters in his Court involving lawyers associated with his former law firm?
- 2) May a Probate Judge hear matters involving conservatorships when the Probate Judge was formerly involved in those matters as County conservator?
- 3) May the Probate Judge reappoint the County conservator who is associated with the Judge's former law firm?

FACTS AND ANALYSIS

The facts as have been presented to this Commission are as follows:

M. Donald Davis, Jr. has recently been elected as Probate Judge of Mobile County, Alabama. He will take office in January, 2001. Presently, he is a member of the law firm of Sirote & Permutt in Mobile, Alabama.

For the past 2 ½ years and until November 13, 2000, Mr. Davis also served as the General Conservator for Mobile County, Alabama, under the former Probate Judge.

In his capacity as General Conservator, he was appointed from time to time as the conservator in various cases by the Probate Court. He also served as the "federal fiduciary" by

designation from the United States Department of Veterans Affairs. He serves as the guardian for a variety of individuals, particularly patients, residing at Searcy Hospital in Mount Vernon, Alabama.

On November 13, 2000, Judge Noonan, the former Probate Judge, appointed Greg Carwie, a lawyer associated with Sirote & Permutt, to serve as the Mobile County General Conservator. Carwie will assume responsibility for most of the cases in which Mr. Davis served as conservator or federal fiduciary.

Mr. Davis states that these cases can last for many years. He further states that he expects to withdraw from the Sirote & Permutt law firm in early January, 2001, before his investiture ceremony on January 11, 2001. He states that when he resigns from the firm, his interest in the 401(k) retirement plan will become fixed, and he will not be eligible to receive any additional contributions on his behalf from the Sirote firm. Additionally, steps are being taken to remove himself as a guarantor of all law firm debt with various financial institutions. He expects that these steps will be completed before January 11, and he will no longer have an ongoing financial interest in the law firm after his resignation becomes effective. He also states that, out of an abundance of caution, he intends to recuse himself from all matters involving the Sirote & Permutt law firm for a period of one year.

It should be noted that these questions were asked of both the Alabama Ethics Commission as well as the Alabama Judicial Inquiry Commission.

The Commission recognizes that, while the Judicial Inquiry Commission has jurisdiction over judges in the State of Alabama, all elected and appointed officials, including judges, at the state, county, and municipal levels of government are subject to the Alabama Ethics Law. Therefore, these questions are properly before the Alabama Ethics Commission and within its jurisdiction.

The Alabama Ethics Law, Code of Alabama, 1975, Section 36-25-1(24) defines a public official as:

“(24) PUBLIC OFFICIAL. Any person elected to public office, whether or not that person has taken office, by the vote of the people at state, county, or municipal level of government or their instrumentalities, including governmental corporations, and any person appointed to a position at the state, county, or municipal level of government or their instrumentalities, including governmental corporations. For purposes of this chapter, a public official includes the chairs and vice-chairs or the equivalent offices of each state political party as defined in Section 17-16-2.”

Section 36-25-5(a) states:

"(a) No public official or public employee shall use or cause to be used his or her official position or office to obtain personal gain for himself or herself, or family member of the public employee or family member of the public official, or any business with which the person is associated unless the use and gain are otherwise specifically authorized by law. Personal gain is achieved when the public official, public employee, or a family member thereof receives, obtains, exerts control over, or otherwise converts to personal use the object constituting such personal gain."

Section 36-25-1(8) defines a conflict of interest as:

"(8) CONFLICT OF INTEREST. A conflict on the part of a public official or public employee between his or her private interests and the official responsibilities inherent in an office of public trust. A conflict of interest involves any action, inaction, or decision by a public official or public employee in the discharge of his or her official duties which would materially affect his or her financial interest or those of his or her family members or any business with which the person is associated in a manner different from the manner it affects the other members of the class to which he or she belongs."

Section 36-25-1(2) defines a business with which the person is associated as:

"(2) BUSINESS WITH WHICH THE PERSON IS ASSOCIATED. Any business of which the person or a member of his or her family is an officer, owner, partner, board of director member, employee, or holder of more than five percent of the fair market value of the business."

In the facts as presented, a conflict of interests would exist in the Probate Judge hearing matters in which he formerly served as conservator or federal fiduciary. He should remove himself from these matters and have his Chief Deputy Clerk handle these cases.

In addition, as the Probate Judge has disassociated himself from Sirote & Permutt, it would not be improper for him to reappoint, as conservator for the County, an associate with that law firm, as the law firm is no longer a business with which the Probate Judge is associated.

As relates to lawyers from the Sirote & Permutt firm appearing in his Court, there would be no prohibition in the Judge hearing these matters, as he has disassociated himself from the firm.

However, it should be pointed out that the Judge has taken the additional precaution of recusing himself from these matters for a period of one year.

CONCLUSION

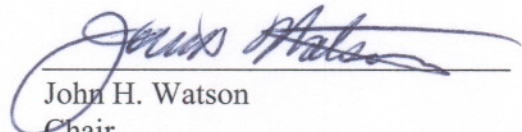
The newly-elected Probate Judge of Mobile County, Alabama, who formerly served as conservator for Mobile County, must recuse himself from any involvement or participation in matters appearing in his Court in which he formerly served as conservator.

The newly-elected Probate Judge of Mobile County, Alabama, may reappoint, as County conservator, an associate with a law firm with which the judge was formerly associated, as the judge has divested himself of all interest in the law firm, and it is no longer a business with which he is associated.

The newly-elected Probate Judge of Mobile County may hear matters in his Court involving lawyers associated with his former law firm, as he has divested himself of all interest in the law firm, and it is no longer a business with which he is associated.

AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on January 10, 2001.


John H. Watson
Chair
Alabama Ethics Commission