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September 4, 2002

**ADVISORY OPINION NO. 2002-37**

Ms. Wanda J. Cochran  
Assistant City Attorney  
City of Mobile  
P.O. Box 1827  
Mobile, Alabama 36633-1827

Conflict of Interest/Spouse Of Member Of  
Architectural Review Board Employed By  
Another Member Of The Architectural  
Review Board.

A member of the Mobile Architectural  
Review Board, whose spouse is employed  
by another member of the Architectural  
Review Board, may not vote, attempt to  
influence, or otherwise participate in a  
matter that comes before the Architectural  
Review Board that involves the  
Architectural firm employing his spouse.

A member of the Mobile Architectural  
Review Board may not vote, attempt to  
influence, or otherwise participate in any  
matter that comes before the Architectural  
Review Board that involves his employer.

When a business associated with the spouse  
of a member or a member of the Mobile  
Architectural Review Board presents a  
matter to the Architectural Review Board,  
notice of that representation must be made to  
the Ethics Commission within ten days of  
the representation having taken place.

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The notification requirement contained in Section 36-25-10 applies not only to the Mobile Architectural Review Board, but to any other quasi-judicial or regulatory body.

It is not a conflict of interest for an Architectural Review Board member to vote on matters pending before the Board, when his or her spouse is the insurance agent for the property involved, when the action taken by the Review Board does not impact on the insurance policy or the spouse's employer's financial interest in the insurance policy.

Dear Ms. Cochran:

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) Should a spouse/board member of the Mobile Architectural Review Board recuse himself from projects presented by the firm which employs his wife?
- 2) Should a board member of the Mobile Architectural Review Board recuse himself from projects presented by his employer?
- 3) Does Section 36-25-10 require architects to file notice with the Ethics Commission every time they have a client who has business with the Mobile Architectural Review Board?
- 4) Does Section 36-25-10 require notice to be filed with the Ethics Commission when a member of the Review Board's firm or a family member represents a client before the Board?
- 5) Should a board member of the Mobile Architectural Review Board recuse himself from a project being presented to the Board, when his spouse is the insurance agent for the property involved in the action?

### FACTS AND ANALYSIS

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

Wanda J. Cochran is an Assistant City Attorney for the City of Mobile, Alabama. One of her duties is to represent the City's Architectural Review Board. The Architectural Review Board is a five-member committee that reviews all changes to historic properties located in Mobile's seven historic districts. In fulfilling this function, they review all building plans and issue or deny, as the case may be, certificates of appropriateness.

The law establishing the Review Board requires that its members have specialized training in historic preservation and architecture. Consequently, a number of architects sit on this board from time to time, who prepare designs for clients that must be approved by the Board.

While the architects recognize that they are not allowed to vote or participate in any matter in which they have an interest, a question has arisen concerning family members' involvement. For example, the spouse of one of the architects who sits on the Review Board is an employee of another architect who also sits on the Review Board. The spouse is not a partner, and does not have any direct financial interest in any particular project.

In addition, a question has arisen about the meaning of Section 36-25-10. This section requires public officials or family members of the public official to file notice with the Ethics Commission if the public official or the family member represents a client for a fee before any board or commission.

The architects who sit on the Review Board often represent clients who must submit their plans for approval by the Review Board. When this situation occurs, there is an agreement between the architect involved and another firm to represent his or her client before the Architectural Review Board. When this happens, the architect/board member leaves the room, and does not participate in any way in the discussion on the project. The Review Board asks whether Section 36-25-10 requires these architects to file notice with the Commission every time they have a client who has business before the Board.

A related question concerns family members. At least one of the architects sitting on the Review Board is in a family firm. Therefore, whenever the board member is prohibited from representing the client, the board member's partner/relative presents the matter on behalf of that client.

Another question presented involves a member of the Architectural Review Board whose spouse is in the insurance business and frequently has properties with matters appearing before the Review Board on which she has written insurance policies.

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 36-25-1(12) defines a family member of the public official as:

"(12) FAMILY MEMBER OF THE PUBLIC OFFICIAL. The spouse, a dependent, an adult child and his or her spouse, a parent, a spouse's parents, a sibling and his or her spouse, of the public official."

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."

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 36-25-9(c) states:

" (c) No member of any county or municipal agency, board, or commission shall vote or participate in any matter in which the member or family member of the member has any financial gain or interest."

Section 36-25-10 states:

"If a public official or public employee, or family member of the public employee or family member of the public official, or a business with which the person is associated, represents a client or constituent for a fee before any quasi-judicial board or commission, regulatory body, or executive department or agency, notice of the representation shall be given within 10 days after the first day of the appearance. Notice shall be filed with the commission in the manner prescribed by it. No member of the Legislature shall for a fee, reward, or other compensation represent any person, firm, or corporation before the Public Service Commission or the State Board of Adjustment."

Under the scenarios presented above, should the architectural firm employing a board member and the spouse of another board member present a matter to the Architectural Review Board, both of these members would have to recuse themselves, as the spouse/employee would be both a family member as defined by the Ethics Law, and the architectural firm would be a business with which the person is associated as defined by the Ethics Law.

Section 36-25-10 requires notification to the Ethics Commission whenever a public official, a public employee, a family member as defined by the Ethics Law of either a public official or a public employee, or a business with which that public official or public employee is associated, represents a client for compensation before a public body that is regulatory in nature, quasi-judicial, etc.

In the facts as set out above, should a business with which a member of the Architectural Review Board is associated, either through a familial relationship or employer/employee relationship, represent clients before the Architectural Review Board, notice of that

representation must be made to the Ethics Commission within ten days of the representation occurring.

In the request for an Advisory Opinion, the issue regarding the spouse who is an insurance agent, while not totally prospective in nature, is a recurring issue that comes before the Architectural Review Board, and based on the fact that it is a frequently recurring issue, it is appropriate for inclusion in this Advisory Opinion.

It would not present a conflict of interest for a member of the Architectural Review Board to vote on matters before the Board, when his spouse has written the insurance policy on the property in question; provided, there is no personal gain or benefit accruing to the spouse or her employer, the insurance company.

Based on the facts as presented and the above law, a member of the Architectural Review Board, whose spouse is employed by another member of the Architectural Review Board, may not vote, attempt to influence, or otherwise participate in any matter that comes before the Architectural Review Board that involves the Architectural firm employing his spouse.

Further, a member of the Mobile Architectural Review Board may not vote, attempt to influence, or otherwise participate in any matter that comes before the Architectural Review Board that involves his employer.

Additionally, when a business associated with the spouse of a member or a member of the Mobile Architectural Review Board presents a matter to the Architectural Review Board, notice of that representation must be made to the Ethics Commission within ten days of the representation having taken place.

The notification requirement contained in Section 36-25-10 applies not only to the Mobile Architectural Review Board, but to any other quasi-judicial or regulatory body.

Finally, it is not a conflict of interest for an Architectural Review Board member to vote on matters pending before the Board, when his or her spouse is the insurance agent for the property involved, when the action taken by the Review Board does not impact on the insurance policy or the spouse's employer's financial interest in the insurance policy.

### **CONCLUSION**

A member of the Mobile Architectural Review Board, whose spouse is employed by another member of the Architectural Review Board, may not vote, attempt to influence, or

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otherwise participate in a matter that comes before the Architectural Review Board that involves the Architectural firm employing his spouse.

A member of the Mobile Architectural Review Board may not vote, attempt to influence, or otherwise participate in any matter that comes before the Architectural Review Board that involves his employer.

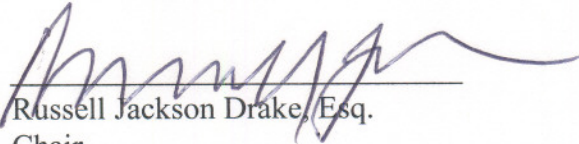
When a business associated with the spouse of a member or a member of the Mobile Architectural Review Board presents a matter to the Architectural Review Board, notice of that representation must be made to the Ethics Commission within ten days of the representation having taken place.

The notification requirement contained in Section 36-25-10 applies not only to the Mobile Architectural Review Board, but to any other quasi-judicial or regulatory body.

It is not a conflict of interest for an Architectural Review Board member to vote on matters pending before the Board, when his or her spouse is the insurance agent for the property involved, when the action taken by the Review Board does not impact on the insurance policy or the spouse's employer's financial interest in the insurance policy.

#### **AUTHORITY**

By 5-0 vote of the Alabama Ethics Commission on September 4, 2002.

  
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Russell Jackson Drake, Esq.  
Chair  
Alabama Ethics Commission