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June 7, 2000

**ADVISORY OPINION NO. 2000-27**

Orrilyn Stallworth, Esq.  
Financial Support Social Worker  
Dale County Department of Human Resources  
P.O. Box 563  
Daleville, Alabama 36322-0563

**Conflict Of Interests/Financial Support  
Social Worker With County Department Of  
Human Resources Opening Practice Of Law.**

A Financial Support Social Worker with the Dale County Department of Human Resources, who opens a practice of law, may not represent clients in any matters that fall under the authority of the State or County Departments of Human Resources or with whom she has had business dealings through the County Department of Human Resources, or who are otherwise clients of the County DHR.

A Financial Support Social Worker with the Dale County Department of Human Resources may open a private practice of law; provided, all work done in conjunction with her private practice of law is done on her own time, whether it is after hours, weekends, etc.; that there is no use of public equipment, facilities, time, materials, human labor or other public property under her discretion or control to assist her in conducting her private law practice or in obtaining clients; and, in addition, that no

confidential information obtained in the course of her employment with the Department of Human Resources is used to assist her in performing legal work or in obtaining business opportunities.

Dear Ms. Stallworth:

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.

### **QUESTION PRESENTED**

May a Financial Support Social Worker with the Dale County Department of Human Resources open a private practice of law while maintaining her employment with the Department of Human Resources?

### **FACTS AND ANALYSIS**

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

Orrilyn Stallworth is a Financial Support Social Worker with the Dale County Department of Human Resources. Her duties involve evaluating eligibility for TANF (Temporary Assistance to Needy Families)-welfare checks, medicaid, food stamps, and collecting data for child support and referring it to that child support unit. She has recently passed the State Bar Exam and desires to open a small civil domestic practice in Dale County, Alabama.

While she has asked the Commission to indicate whether or not she can practice in certain areas, specifically;

- 1) Bankruptcy practice
- 2) Divorce
- 3) Probate practice
- 4) Disability cases

the consideration here is whether or not the cases she handles through her private practice of law have any bearing on or relationship to her duties with the Department of Human Resources (DHR) or any relationship to the responsibilities and functions of DHR in general. The other

consideration is whether or not a legal matter she wishes to undertake would involve an individual who is a client of DHR.

She has also asked two specific questions, which are as follows:

- 1) DHR does not get involved in custody battles unless it is a "protected child" in protective custody of the agency. Based on this rule of thumb, she asks if custody cases would be permitted.
- 2) Would there be a conflict of interest if she pursued Social Security for a client of DHR with whom she was not involved?

The Alabama Ethics Law, Code of Alabama, 1975, Section 36-25-1(23) defines a public employee as:

"(23) PUBLIC EMPLOYEE. Any person employed at the state, county, or municipal level of government or their instrumentalities, including governmental corporations and authorities, but excluding employees of hospitals or other health care corporations including contract employees of those hospitals or other health care corporations, who is paid in whole or in part from state, county or municipal funds. For purposes of this chapter, a public employee does not include a person employed on a part-time basis whose employment is limited to providing professional services other than lobbying, the compensation for which constitutes less than 50 percent of the part-time employee's income."

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 36-25-2(b) in pertinent part states:

"An essential principle underlying the staffing of our governmental structure is that its public officials and public employees should not be denied the opportunity, available to all other citizens, to acquire and retain private economic and other interests, except where conflicts with the responsibility of public officials and public employees to the public cannot be avoided."

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 36-25-8 states:

"No public official, public employee, former public official or former public employee, for a period consistent with the statute of limitations as contained in this chapter, shall use or disclose confidential information gained in the course of or by reason of his or her position or employment in any way that could result in financial gain other than his or her regular salary as such public official or public employee for himself or herself, a family member of the public employee or family member of the public official, or for any other person or 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 36-25-5(c) states:

"(c) No public official or public employee shall use or cause to be used equipment, facilities, time, materials, human labor, or other public property under his or her discretion or control for the private benefit or business benefit of the public official, public employee, any other person, or principal campaign committee as defined in Section 17-22A-2, which would materially affect his or her financial interest, except as otherwise provided by law or as provided pursuant to a lawful employment agreement regulated by agency policy."

Section 36-25-5(e) states:

“(e) No public official or public employee shall, other than in the ordinary course of business, solicit a thing of value from a subordinate or person or business with whom he or she directly inspects, regulates, or supervises in his or her official capacity.”

While the Ethics Law would not prevent Ms. Stallworth from practicing law, there would be a conflict of interest were she allowed to represent clients in matters that involve her employer, namely, Dale County Department of Human Resources or the State Department of Human Resources in general (as the counties fall under the state umbrella), or if she were to use her position with the County Department of Human Resources to obtain clients.

In addition, it would present a conflict of interests for Ms. Stallworth to represent individuals who are otherwise clients of the Department of Human Resources, even though they may not be part of her caseload.

To specifically address her two questions, it would be a conflict of interests for Ms. Stallworth to represent clients in custody matters if the cases involve a protected child who is in the protective custody of DHR. While it would not present a conflict for her to represent clients in custody matters where the individuals involved were not protected children or otherwise clients of the Department of Human Resources, should a child involved potentially become a protected child under DHR's custody, Ms. Stallworth should request an Advisory Opinion on that fact-specific question.

As relates to question number two, it would be a conflict of interests for Ms. Stallworth to represent clients of DHR, even though they may not be her clients.

Based on the above law and the facts as provided, a Financial Support Social Worker with the Dale County Department of Human Resources, who opens a practice of law, may not represent clients in any matters that fall under the authority of the State or County Departments of Human Resources or with whom she has had business dealings through the County Department of Human Resources, or who are otherwise clients of the County DHR.

However, a Financial Support Social Worker with the Dale County Department of Human Resources may open a private practice of law; provided,

- 1) that all work done in conjunction with her private practice of law is done on her own time, whether it is after hours, weekends, etc.;

- 2) that no confidential information obtained in the course of her employment with the Department of Human Resources is used to assist her in performing legal work or in obtaining business opportunities;
- 3) that there is no use of public equipment, facilities, time, materials, human labor or other public property under her discretion or control to assist her in conducting her private law practice or in obtaining clients; and,
- 4) that she not represent clients in any matters that fall under the authority of the State or County Departments of Human Resources or with whom she has had business dealings through the County Department of Human Resources, or who are otherwise clients of the County DHR.

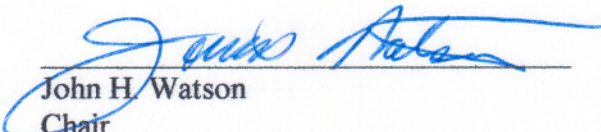
#### CONCLUSION

A Financial Support Social Worker with the Dale County Department of Human Resources, who opens a practice of law, may not represent clients in any matters that fall under the authority of the State or County Departments of Human Resources or with whom she has had business dealings through the County Department of Human Resources, or who are otherwise clients of the County DHR.

A Financial Support Social Worker with the Dale County Department of Human Resources may open a private practice of law; provided, all work done in conjunction with her private practice of law is done on her own time, whether it is after hours, weekends, etc.; that there is no use of public equipment, facilities, time, materials, human labor or other public property under her discretion or control to assist her in conducting her private law practice or in obtaining clients; and, in addition, that no confidential information obtained in the course of her employment with the Department of Human Resources is used to assist her in performing legal work or in obtaining business opportunities.

#### AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on June 7, 2000.

  
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John H. Watson  
Chair  
Alabama Ethics Commission