

JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 06-861

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DISQUALIFICATION DUE TO FINANCIAL RELATIONSHIP WITH AN ATTORNEY FOR A PARTY TO A PROCEEDING

ISSUE

Is a municipal judge disqualified from hearing cases in which a party is represented by an attorney who shares a secretary with the judge's law firm and who rents office space in a building partly owned by the judge. **Yes**, as a part owner of the building and the law firm both receiving income from the attorney, the judge is disqualified from hearing cases in which the attorney represents a party.

FACTS

A local attorney has an office sharing arrangement with a law firm of which a part time municipal court judge is a part owner. The attorney pays part of the salary of a secretary he shares with the firm and will soon actually rent office space in the building which is partly owned by the municipal court judge. As a part owner of the building, the municipal court judge will receive part of the rent paid by the attorney. The attorney has appeared frequently in municipal court where the judge is newly appointed.

DISCUSSION

Canon 3C of the Alabama Canons of Judicial Ethics provides the following, in pertinent part:

(1) a judge should disqualify himself in a proceeding in which his disqualification is required by law or his impartiality might reasonably be questioned, including but not limited to instances where:

(c) He knows that he, individually or as a fiduciary, . . . has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding.

(d) He or his spouse, or a person within the fourth degree of relationship to either of them, or the spouse of such a person:

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(ii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding.

In previous advisory opinions the Commission has consistently found that judges are disqualified when an attorney in a case before the judge rents property directly from the judge or the judge's spouse. Advisory Opinions 81-115, 82-130, 86-255, and 97-660. These opinions were based upon the judge's impartiality being reasonably questionable. The Commission has explained that a judge's impartiality is reasonably questionable where the judge receives income as a financial benefit from an attorney or law firm occupying a building owned by the judge or the judge's spouse, and the financial benefit or income may depend on the financial success of the attorney or law firm. Advisory Opinion 82-164.

REFERENCES

Advisory Opinions 81-115, 82-130, 82-164, 86-255, and 97-660.

Alabama Canons of Judicial Ethics, Canons
3C(1)(c) and 3C(1)(d)(ii)

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.