

JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 06-864

ORDERING A DEFENDANT TO ATTEND A COURSE PROVIDED BY AN ATTORNEY WITH WHOM THE JUDGE HAS FINANCIAL AND OTHER RELATIONSHIPS

ISSUE

May a part-time municipal judge make discretionary orders that defendants attend a domestic violence course provided by an attorney who is a tenant of the judge, to whom he may refer clients, and with whom he may occasionally jointly handle cases? **Answer:** No, the judge is disqualified to handle cases in which the domestic violence program is an option due to his landlord relationship with the attorney who operates the program; if such cases would ordinarily come before him more than occasionally, he is not permitted to lease office space to that attorney.

FACTS

For some months, a part-time municipal judge has allowed an attorney to maintain an office in a building owned by the judge and his wife where the judge has his own law practice. The attorney paid no rent until January. Soon after that payment, the attorney appeared in the judge's court. Before realizing this was a problem, the judge ordered the defendant to pretrial diversion. When he recognized the conflict shortly thereafter, he entered an order of recusal in the case.

The same attorney provides a domestic violence course that is used by the courts in the county where the judge sits. The course is not otherwise available.

The judge now understands that he should not hear cases of an attorney who is also a tenant, and that he must minimize financial activities that would cause recusal. He inquires whether it would be improper to order defendants to attend the domestic violence intervention course operated by the attorney who is his tenant. Such an order is discretionary. The judge anticipates that the attorney will pay rent for the office space he occupies. In addition to being a

tenant, the judge foresees possibly, in his capacity, as a lawyer, referring clients to this attorney and/or occasionally handling a case jointly with him and, thus, sharing a legal fee.

DISCUSSION

The Commission has long held that a judge may not have a landlord/tenant relationship with an attorney who regularly appears before him. *See, e.g.,* Advisory Opinions 81-115, 82-130 and 82-164. These opinions follow from Canons 3C(1), 5C(1) and 5C(3). The judge receives income as a financial benefit from the attorney, the financial benefit or income may depend on the financial success of the attorney, and the judge is required to manage his financial interests so as to minimize the number of cases in which he is disqualified. Since the inquiring judge states that he understands these requirements, the Commission assumes that the attorney/tenant does not routinely handle cases in the municipal court where the judge sits.

The Commission has rendered several prior opinions that it finds instructive with regard to a judge's landlord relationship with an attorney offering a domestic violence intervention course that the judge has discretion to order defendants to attend.

In Advisory Opinion 88-339, the Commission decided that a judge was not permitted to lease a building he jointly owned to a Regional Council on Alcoholism because the Council conducted a driving school program that the judge was required to order convicted DUI defendants to attend. The judge had discretion as to the level of the school a defendant would attend; different levels required different fees. The Commission's opinion was based on Canons 3C(1)(c), 3C(1)(d)(ii), and 5C.

The Canon 3C(1) provisions state, 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 . . . or his spouse . . . has a financial interest in . . . a party to the proceeding, or any other interest that could be financially affected by the outcome of the proceeding;

(d) He . . .

* * * *

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

Canon 5C governs financial activities, requiring a judge to, in pertinent part, "refrain from financial and business dealings that tend to reflect adversely on his impartiality, [or] interfere with the proper performance of his judicial duties," and to manage his financial interests "to minimize the number of cases in which he is disqualified."

In Advisory Opinion 88-339, part of the judge's proposed lessee's income would have been dependent on the outcome of DUI cases on the judge's docket. Thus, the judge had an interest in his lessee's income that could be substantially affected by the outcome of DUI cases. Under these circumstances, the judge would not be minimizing cases in which he was disqualified and, thus, the proposed financial arrangement was found inconsistent with the canons.

The Commission similarly decided in Advisory Opinion 94-532 that it would constitute a violation

of the canons for a judge to refer a defendant to a private, for-profit drivers' education program if the judge had any financial interest in the treatment center or if the judge received any personal benefit, financial or otherwise, from the center as a result of the judge's referral.

In Advisory Opinion 99-742, the Commission held that a judge was not permitted to appoint an attorney who was renting office space from the judge's wife as counsel for indigent defendants whose cases would be on his colleague's dockets. Since the financial well being of the attorney could affect the judge's own financial interests, the Commission found the judge's impartiality in exercising his discretion to appoint this attorney might reasonably be questioned.

Under the facts now presented, it is the opinion of the Commission that the judge is disqualified to handle cases in which the domestic violence program is an option due to his landlord relationship with the attorney who operates the program and, if such cases would ordinarily come before him more than occasionally, he is not permitted to lease office space to that attorney. Even without the prospect of financial benefit, *i.e.*, even were the judge not to receive rent from the attorney in question, there would be a real issue as to the propriety of the judge ordering defendants to the attorney's domestic violence program. In Advisory Opinion 94-538, the Commission concluded a judge was not permitted to sentence defendants to attend a DUI program taught by his bailiff. The Commission was of the opinion that such an arrangement was "fraught with the appearance of impropriety and does not promote public confidence in the integrity and impartiality of the judiciary" (Canons 1 and 2A), and could "convey or permit others to convey the impression that they are in a special position to influence [the judge]" (Canon 2C).

REFERENCES

Advisory Opinions 81-115, 82-130, 82-164, 88-339, 94-532, 94-538, and 99-742.

Alabama Canons of Judicial Ethics, Canons 1, 2A, 2C, 3C(1), 3C(1)(c), 3C(1)(d)(ii), 5C, 5C(1) and 5C(3).

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.