

JUDICIAL INQUIRY COMMISSION

DATE ISSUED: OCTOBER 26, 2023

ADVISORY OPINION 23-958

TRANSITION TO THE BENCH: PAYMENT OF LEGAL FEES PREVIOUSLY EARNED

DISQUALIFICATION: ACCEPTING PAYMENT OF LEGAL FEES FROM ATTORNEY APPEARING BEFORE THE JUDGE

ISSUES

May a recently-elected district judge accept payment of legal fees pursuant to a settlement agreement from former opposing counsel?

Answer: Yes.

Is the judge disqualified from cases in which the opposing counsel appears if the judge accepts the payment?

Answer: No.

FACTS

Prior to taking the bench, a newly-elected district judge settled a domestic relations case. As part of the settlement agreement, the husband agreed to pay a \$5,000 contribution toward the judge's fees earned during the course of the judge's representation of the wife. The husband was to pay the \$5,000 on or before June 1, 2023. The husband made one payment of \$800 in July 2023, but otherwise did not uphold the agreement to pay the amount of the judge's fee. The husband's attorney has paid the remaining \$4,200 of the judge's fee pursuant to an arrangement between the husband and the attorney.

DISCUSSION

I.

The Commission has long advised that a judge may, pursuant to a prior fee agreement, accept payment for legal fees the judge earned during his or her representation of clients prior to taking the bench. *See, e.g.*, Advisory Opinion 13-921. Whether the judge may accept the payment is not affected by the identity of the person making the payment. Here, the payment made to the judge was to satisfy a party's obligation, pursuant to a settlement agreement made prior to the judge taking the bench, to pay legal fees earned by the judge during the judge's representation of the other party. Therefore, the judge may accept the payment of \$4,200 from the attorney to satisfy the husband's obligation to pay the judge's legal fees pursuant to the settlement agreement.

II.

Although, the identity of the person making the payment does not affect the judge's ability to accept a payment for earned legal fees, it may be a circumstance that requires the judge's disqualification. If the payment is coming from a party, attorney, or firm who is likely to appear before the judge, then the judge must consider whether the judge is required to disqualify from cases involving the party, attorney, or firm.

Typically, disqualification issues regarding a judge's acceptance of legal fees after taking the bench arise in cases involving the judge's former firm. The Commission recognized in Advisory Opinion 86-248 that, where a judge expects to receive payments from his or her former firm for work performed prior to becoming a judge, the judge is disqualified from cases involving his or her former firm. This is because the judge would be in an ongoing financial relationship with the former firm that would give the judge an interest in the firm that could be substantially affected by the outcome of cases in which the firm appears. *See* Canon 3C(1)(c); *but see* Advisory Opinion 97-659 ("If the judge's portion of the award is established, but is not distributed before the judge has been sworn in, the judge is not disqualified from hearing cases involving his former firm for that reason."). Once the financial relationship has been terminated—*i.e.*, all financial obligations on the part of the judge and the firm have been satisfied—then the judge's disqualification is no longer required on this basis.¹

However, the circumstances presented by the inquiring judge do not mirror the typical scenario in which these issues arise. Here, the payment is a single between the judge and former opposing counsel, rather than a former firm, and was made in full. Therefore, there is no ongoing

financial relationship between the judge and former opposing counsel which would create an interest on the part of the judge in the former opposing counsel's financial success.

Similarly, under the facts presented, there is no reasonable basis for questioning the judge's impartiality that would require the judge's disqualification under the general disqualification provision in Canon 3C(1). The test for Canon 3C(1)'s general disqualification provision is: "Would a person of ordinary prudence in the judge's position *knowing all of the facts known to the judge* find that there is a reasonable basis for questioning the judge's impartiality?" *Matter of Sheffield*, 465 So. 2d 350, 356 (Ala. 1984) (emphasis added). As explained above, a judge may accept payment of legal fees that he or she is entitled to for work performed prior to taking the bench. Under the circumstances presented, a reasonable person, knowing that the payment from the former opposing counsel was to satisfy an outstanding obligation pursuant to a settlement agreement to pay legal fees that the judge earned prior to taking the bench, would not be able to reasonably question the judge's impartiality in cases involving the former opposing counsel. *Cf.* Advisory Opinion 97-659.

¹ The judge's disqualification may still be required based on additional circumstances.

The former opposing counsel made the payment to the judge in full, satisfying the entire amount of the debt. Therefore, there is no ongoing financial relationship between the judge and the former opposing counsel that would necessitate the judge's disqualification. Further, no reasonable person could reasonably question the judge's impartiality based on the payment by the former opposing counsel to the judge because the judge was entitled to the payment for legal work the judge performed prior to taking the bench. Therefore, the judge is not disqualified from cases in which the former opposing counsel appears based on the payment.

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REFERENCES

Alabama Canons of Judicial Ethics
3C(1), 3C(1)(c).

Alabama JIC Advisory Opinions 86-
248, 97-659, and 13-921.

Matter of Sheffield, 465 So. 2d 350,
356 (Ala. 1984).

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 18 of the Alabama Rules of Procedure of the Judicial Inquiry Commission. For further information, you may contact the Judicial Inquiry Commission, P.O. Box 303400, Montgomery, Alabama