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Judicial Inquiry Commission

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MONTGOMERY, ALABAMA 36104

December 13, 1978

The Judicial Inquiry Commission has considered your request for an opinion. In your request, you state that you are presently serving as an attorney member of the Alabama Court of the Judiciary and also engage in the practice of law. You further state that you are the attorney in your firm having the primary responsibility for handling a matter concerning a long-time regular client of your firm. The matter is one against a Circuit Judge. During your representation of this client, you have become aware of and have personal knowledge of facts which lead you to suspect that a Circuit Judge has violated one or more of the Canons of Judicial Ethics.

With regard to the above facts you ask our opinion concerning the following questions:

“A. Are the provisions of Canon 3B(3) of the Canons of Judicial Ethics applicable to me?

B. Should I take or initiate appropriate disciplinary measures against the judge for unprofessional conduct of which I have personal knowledge by bringing the facts known to me to your attention?

C. If the answer to B is affirmative should I take or initiate such measures even if the knowledge I have is privileged, i.e., within the attorney-client privilege (see DR 1-103(A) and DR 4-101 of the Code of Professional Responsibility of the Alabama State Bar).”

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It is our opinion that your questions A and B must be answered in the affirmative. The canons provide no exemption for part-time or special judges from the provisions of Canon 3B(3) requiring judges to initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge has personal knowledge.

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Your third question is answered in the negative. It is our opinion that Canon 3B(3) does not require a judge to take or initiate disciplinary measures against another judge or attorney when the knowledge of unprofessional conduct in the possession of the judge is privileged under the attorney-client relationship. To hold otherwise would seriously

restrict the part-time or special judge's ability to perform as effective counsel for his client. We do consider, however, that Canon 3B(3) places upon the attorney judge a burden to make full disclosure to his client in an effort to obtain the client's permission for reporting the judge's conduct.