

## Judicial Inquiry Commission

800 SOUTH MCDONOUGH STREET  
SUITE 201  
MONTGOMERY, ALABAMA 36104

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The Judicial Inquiry Commission has considered your request for an opinion concerning whether under the Alabama Canons of Judicial Ethics a judge may enter into a lease arrangement for a building owned by the judge where the prospective lessee is an entity to which the judge, as judge, would refer fee-generating clients. Under the facts presented, the judge jointly owns a building which the Regional Council on Alcoholism is interested in leasing. The Regional Council on Alcoholism conducts legally mandated driving schools for convicted DUI offenders. As part of the judge's judicial duties, the judge hears DUI appeals from District and Municipal courts. These appeals are de novo and upon conviction a defendant must be referred to the DUI School. All such referrals generate fees for the Regional Council on Alcoholism and while it is mandatory that convicted defendants be referred, the judge has discretion to determine which level of DUI School the defendant will attend. Different levels require different fees.

It is the opinion of the Commission that the lease arrangement described is prohibited by the Alabama Canons of Judicial Ethics. This opinion is based on Canon 5C and Canon 3C of the Alabama Canons of Judicial Ethics.

Canon 5C governs the financial activities of judges. In pertinent part that canon provides:

### C. FINANCIAL ACTIVITIES

- (1) A judge should refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, or exploit his judicial position.
- (2) Subject to the requirements of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity including the operation of a business.
- (3) A judge should manage his investments and other financial interests to minimize the number of cases in he is disqualified.  
(Emphasis supplied.)

Thus, it appears that a judge must manage his property so as to minimize the number of cases in which he is disqualified .

Judicial disqualification is governed primarily by Canon 3C of the Alabama Canons of Judicial Ethics. In pertinent part, that Canon provides:

C. DISQUALIFICATION

- (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, or his spouse or minor child residing in his household, 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 . . .

\* \* \* \*

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

In the present instance part of the income of the judge's lessee would be dependent upon the outcome of DUI cases appearing on the judge's docket. Therefore, the judge, as lessor, has a continuous interest in his lessee's income which could be "substantially affected by the outcome" of DUI proceedings. Under these circumstances the judge would not be managing his property so as to "minimize the number of cases in which he is disqualified." Thus, the financial arrangement in question would not be consistent with the Canons.

Sincerely,

JUDICIAL INQUIRY COMMISSION