

Judicial Inquiry Commission

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MONTGOMERY, ALABAMA 36104

April 30, 1991

The Judicial Inquiry Commission has considered your request for an opinion concerning whether, under the Alabama Canons of Judicial Ethics, a judge may continue to participate in a KEOUGH retirement plan set up by his old law firm while he was a partner in the firm or is the judge required to withdraw his portion of the investment funds. Under the arrangement, the fund is presently managed by a bank and the partners in the law firm direct the bank trustee as to the investment of the funds. After assuming the bench, the judge no longer participates in directing the investment of the funds or making further contributions to the fund. However, a sub-account may be set up for the judge's account over which the judge would have investment authority and for which the judge would pay the management fee.

It is the opinion of the Commission that the judge may leave his accumulated funds in the KEOUGH plan without violating the Alabama Canons of Judicial Ethics if he sets up the sub-account for which the judge pays the management fee as described and into which the law firm makes no further contributions on the judge's behalf. This opinion is based upon Canons 3C and 5C.

The Canons provide in pertinent part as follows:

Canon 3C

- (1) A judge should disqualify himself in a proceeding in which his disqualification is required by law or his impartiality might reasonably be questioned,

Canon 5C

- (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 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 which he is disqualified.

In interpreting the provisions of Canon 3C this Commission previously advised in Advisory Opinion 76-3 that participation in an investment club does not require the judge's disqualification in proceedings in which a lawyer member of the club represents a party to the proceeding. We reach the same conclusion in this instance where the judge maintains a sub-account and the law firm makes no further contribution, including a management fee on behalf of the judge. We further note that Canon 5C specifically allows a judge, subject to certain requirements, to hold and manage investments. These requirements are, as set out above, that the holding of the investments does not interfere with the proper performance of the judge's judicial duties or reflect adversely on his impartiality. Under the facts stated, the participation in the KEOUGH plan violates neither of these requirements.

Sincerely,

JUDICIAL INQUIRY COMMISSION