

Judicial Inquiry Commission

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June 24, 1991

In your letter dated June 12, 1991, you request an opinion from the Alabama Judicial Inquiry Commission on whether you are disqualified under the following circumstances:

An attorney has constructed an office building. The attorney leases the building to the judge's wife for her use as a dental office in her full-time practice of dentistry. The judge is not a party to the lease. Is the judge disqualified in any case in which that attorney appears before the judge?

It is the opinion of the Commission that under the specific facts provided the judge is disqualified under the Alabama Canons of Judicial Ethics. However, that disqualification may be remitted.

Canon 2 provides that "A judge should avoid impropriety and the appearance of impropriety in all his activities." Canon 3C(I) provides that "A judge should disqualify himself in a proceeding in which his . . . impartiality might reasonably be questioned . . ." Generally, the relationship of landlord-tenant between a judge and an attorney who practices before the judge tends to create both the appearance of impropriety and impartiality. In Advisory opinion 91-428, this Commission held that a judge is disqualified in proceedings involving an attorney to whom the judge has sold a building owned by the judge and his wife where the judge and his wife finance the purchase or remain liable as guarantors on a loan assumed by the attorney. See also Advisory Opinion 81-116 (disqualification where judge or his family receives rental income from a building the judge rents to his former law partners.)

Similar appearances of impropriety and impartiality tend to arise if the landlord-tenant relationship only involves the judge's wife and the attorney. In Advisory Opinion 82-130, this Commission held that a judge was disqualified in proceedings involving an attorney who rented office space in a building owned by the judge's spouse or by the judge and the judge's spouse even though all financial transactions regarding the rental were handled by the spouse. See also Advisory Opinion 86-225 (disqualification where attorney rents residence from the judge's wife and her aunt.)

In any case in which the attorney practices before you, full disclosure of your spouse's landlord-tenant relationship must be made and the consent of all parties and their lawyers must be obtained in order to avoid disqualification. See Canon 3D.