

Judicial Inquiry Commission

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December 16, 1991

This is in response to your request for an advisory opinion from the Alabama Judicial Inquiry Commission.

Your question is whether you should recuse yourself in the following situation:

Your former secretary has been charged in a criminal prosecution with forgeries of personal funds belonging to you and your wife. Because banks and credit card companies are involved, you, in your private capacity, have hired Attorney A to protect your personal and financial interests. Attorney B has been appointed to represent your secretary in the criminal matter.

A civil action involving an unrelated domestic relations matter is pending before you as circuit judge. Attorney B represents one of the parties and has filed a motion to recuse. The attorney for the other party is a member of the same law firm as Attorney A.

It is the opinion of the Commission that under the above facts your recusal from the pending civil case is required under Canon 2C.

In Advisory Opinion 78-53, the Commission held that “the mere fact that a judge has retained an attorney’s law partner to represent the judge or a member of the judge’s family in a single case would not disqualify the judge, under Canon 3C, from sitting in a different case where the attorney represents one of the parties.”

However, in this case there are additional considerations in that defense counsel for your former secretary is representing the other party to the civil action, and the criminal prosecution of your former secretary involves the alleged theft of property owned by you and your wife. Under these particular circumstances, the appearance of impropriety is substantial.

Canon 2A of the Alabama Canons of Judicial Ethics provides:

“A judge should avoid impropriety and the appearance of impropriety in all his activities.

“A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.”

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Of course, once the attorney-client relationship between the attorney and your former secretary is terminated, this particular ground of disqualification will cease. At such time, you will no longer be disqualified on this ground and may preside over a matter involving either that attorney or any member of his firm.

The Commission thanks you for your inquiry.

Respectfully,