

Judicial Inquiry Commission

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December 18, 1992

This is in response to your request for an advisory opinion from the Judicial Inquiry Commission. Your question is whether or not you are disqualified under the following circumstances:

The case is Stryker v. Phillips Petroleum Company. The plaintiffs' claims may be worth as much as 23 to 30 million dollars. If the plaintiffs are successful in this civil action, Hickok Oil Texas Company, Inc., pursuant to a written agreement with the plaintiffs, would share in ten percent of the proceeds of that success. Bay City Consolidated Partners, Inc. would share a "very, very, very small (undetermined] amount" of the benefits shared by Hickok Oil based upon work performed in preparation for the lawsuit. The benefits Bay City may potentially receive are based upon a "moral obligation" or "verbal understanding" with the secretary-treasurer of Hickok Oil and not a "legal written understanding."

The judge owns a .0079% interest (approximately valued at \$8,000) in Bay City. A principal partner of Bay City is E.T. who is a partner in the same law firm as the judge's brother.

There are two potential grounds for disqualification under these circumstances: 1) the judge's ownership of a financial interest in Bay City, and 2) the fact that a principal partner of Bay City is a member of the same law firm as the judge's brother.

From your letter and the attached transcript of testimony, it is the impression of this Commission that Bay City agreed with Hickok Oil to make copies of leases and public records in the probate court in preparation for the lawsuit. Bay City agreed to forego immediate financial compensation upon the verbal agreement that Bay City would share in that portion of the proceeds which a named plaintiff was legally obligated to pay to Hickok Oil in the event of a successful suit. Although Bay City is not a named party to the action, it will in fact receive a portion of any proceeds awarded the plaintiffs. Bay City's compensation for work performed is in fact directly contingent only upon the success of the plaintiffs. If the plaintiffs receive no recovery, Bay City will not receive any compensation and will have no claim against Hickok Oil.

It appears that you are disqualified on ground number one because of your financial interest in Bay City. Canon 3C, Alabama Canons of Judicial Ethics provides:

“(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, ... 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.”

A “financial interest’ means ownership of a legal or equitable interest, however small, . . . in the affairs of a party.” Canon 3C(3)(c) (emphasis added).

Although Bay City is not a named party to the law suit, it did work in preparation for the law suit, it has a financial interest in the success of the law suit, and will be compensated for the work performed only in the event of a successful suit. Because of your financial interest in Bay City, you have an interest in the outcome of the law suit distinguishable from that of other judges who do not have any stock in Bay City. While your financial interest in Bay City appears to be slight, “[a]ny financial interest, however small, in a party or the subject matter requires disqualification.” Leslie Abramson, Judicial Disqualification Under Canon 3C of the Code of Judicial Conduct 71 (2d ed. 1992). Please note that your disqualification under Canon 3C(l)(c) may be remitted under the terms of and in the manner specified in Canon 3D.

The fact that a partner in Bay City is a member of the same law firm as your brother furnishes no ground for disqualification. The Commission is of the opinion that this situation does not rise to the level that your “impartiality might reasonably be questioned” under Canon 3C(l) on that basis and that there is no “appearance of impropriety” under Canon 2.

This opinion has been approved by the Judicial Inquiry Commission. If you have any question regarding this or any other matter you may contact me at your convenience.