

Judicial Inquiry Commission

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The Judicial Inquiry Commission has considered your request for an opinion concerning whether a judge is disqualified from sitting in cases wherein a party is represented by a member of a law firm where the judge owns property with another member of that firm and, from time to time, borrow monies together with that other attorney and has outstanding debts in connection with the ownership of such jointly held property. You relate "significant financial contacts" with the attorney/partner of the judge. You also relate that the attorney/partner of the judge does not have a significant interest in the outcome of the litigation before the judge.

As acknowledged in Advisory Opinion 94-527, the correct rule was stated in Bryars v. Bryars, 485 So. 2d 1187, 1189 (Ala. Civ. App. 1986):

A judge's hearing of a matter whereby a party is represented by an attorney, or the law firm of an attorney, who jointly owns land with the trial judge is not a violation per se of Canon 3C(l). That canon must be read, considered, and applied along with Canon 5C(l) and (2). However, if other circumstances are added to the simple joint ownership of land by a judge and an attorney, it might appear to a reasonable person that the judge could not be impartial, and a recusal would be required.

The mere joint ownership of property by a judge and an attorney does not cause the judge's disqualification even in cases in which the attorney in question himself represents a party to the proceeding. See Advisory Opinion 81-116 (joint ownership of mortgaged property not prohibited so long as no problems arise as to the payment of the mortgage indebtedness or taxes or insurance), 83-172 (joint ownership of a building in which the judge receives no rent from the attorney and each pays one half of the mortgage indebtedness, insurance and taxes not prohibited), 83-198, and 94-527. As noted in Advisory Opinion 83-198, the Canons have been applied by the Commission to cause a judge's disqualification in a proceeding if one of the attorneys in the proceeding is engaged in financial dealings with the judge whereby he is financially indebted to the judge or the judge rents office space to the attorney.

It is the opinion of the Commission that, under the facts you have presented, the judge is not disqualified from sitting in cases in which a party is represented by a member of the law firm in which the judge's partner is a member.