

Judicial Inquiry Commission

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May 9, 1997

The Judicial Inquiry Commission has considered your request for an advisory opinion concerning whether a district judge may mediate an action pending in Circuit Court pursuant to an agreement between the parties and without charge.

The Commission is of the opinion that a full-time district judge is prohibited from serving as a mediator in an action not before him. This prohibition applies without regard to whether the parties agree to such service or whether such service would be without compensation.

As you note, Canon 5E states, "A judge should not act as an arbitrator or mediator." Canon 5D precludes a judge from acting as a fiduciary where such service would interfere with the proper performance of his judicial duties, and Canon 5F prohibits a judge from serving as a lawyer. When viewed together with Canon 5E, they illustrate that a judge's primary duty is as a judge.

In Advisory Opinion 90-392, a copy of which is enclosed, the Commission concluded that whether a retired circuit judge was prohibited from serving as a private mediator or arbitrator for compensation depended on whether the retired judge was serving as a full-time active circuit judge, as some supernumerary judges do. If serving full-time, the retired judge was prohibited from serving as a private mediator or arbitrator. If a judge merely hears cases from time to time, he should not be considered to be full-time.

The district court judgeships in Montgomery County are full-time positions. The district judge should devote himself or herself to the judicial position on a full-time basis and should not serve as a mediator or arbitrator. If the position were not full-time, the analysis in Advisory Opinion 90-392 would apply.

This opinion should not be read to affect the service of retired or supernumerary judges as mediators. Such service is governed by the Compliance portions of the Canons and Advisory Opinion 90-392.

Very Truly Yours,

JUDICIAL INQUIRY COMMISSION