

JUDICIAL INQUIRY COMMISSION

DATE ISSUED: JANUARY 24, 2003

ADVISORY OPINION 03-809

DISQUALIFICATION WHERE ATTORNEY SUBLEASES OFFICE IN BUILDING OWNED BY JUDGE

ISSUES

Is a judge disqualified to hear cases in which an attorney appears who has his office in a building owned by the judge, the space being subleased from the judge's lessee? **Answer:** No, unless the judge knows that his financial interests could be substantially affected by the outcome of the litigation, or there are other additional circumstances causing the judge's impartiality to be reasonably questionable.

FACTS

A judge and a member of his family have a lease agreement wherein they rent an office building to an attorney who does not appear before the judge. That attorney recently entered into a business relationship with a second attorney which includes a sharing of office expenses and subleasing to the second attorney office space in the judge's building. The lease agreement on the judge's building continues to be between the judge and the first attorney, who will continue to make the lease payments and is the responsible lessee. The same amount of rent is due the judge whether or not the lessee subleases any of the building.

DISCUSSION

Canon 3C of the Alabama Canons of Judicial Ethics provides the following, in pertinent part:

- (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, individually or as a fiduciary, . . . 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.

(d) He or his spouse, or a person within the fourth degree of relationship to either of them, or the spouse of such a person:

* * * * *

(ii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding.

"Canon 5C prohibits a judge from owning or managing real estate where to do so reflects adversely on his impartiality, interferes with the proper performance of his judicial duties, or exploits his judicial position. Otherwise, a judge may own or manage real estate investments." Advisory Opinion 84-210.

The Commission has addressed the issue of disqualification in the context of the sublease of property owned by a judge on three prior occasions. In Advisory Opinion 84-212, the Commission decided that a judge was not disqualified to hear an action in which a party was the sublessee of property owned by the judge, all privity of contract being between

the judge and the individual lessee, unless the judge knew that his interest would be substantially affected by the outcome of the proceeding. In Advisory Opinion 86-275, the Commission decided that the judge was disqualified where the judge leased property with the unlimited right of sublease and the sublessee was an attorney appearing before the judge where the judge knew that his financial interests would be substantially affected by the outcome of the proceeding, or where additional circumstances existed causing his impartiality to be reasonably questionable. Advisory Opinion 86-275 was reaffirmed by the Commission in Advisory Opinion 99-719.

These decisions follow from other opinions finding judges to be disqualified when an attorney in the case rented property directly from the judge or the judge's spouse. Advisory Opinions 81-115, 82-130, 86-255, and 97-660. These opinions were based upon the judge's impartiality being reasonably questionable. The Commission has explained that a judge's impartiality is reasonably questionable where the judge receives income as a financial benefit from an attorney or law firm occupying a building owned by the judge or the judge's spouse, and the financial benefit or income may depend on the financial success of the attorney or law firm. Advisory Opinion 82-164.

The circumstances in the present case are not materially different from those in Advisory Opinion 99-719. The Commission continues to be of the opinion that a judge is not disqualified to hear cases involving an attorney who subleases office space from the judge's lessee unless the judge knows that his financial interests could be substantially affected by the outcome of the proceeding, or there are other additional circumstances causing the judge's impartiality to be reasonably questionable.

REFERENCES

Alabama Advisory Opinions 81-115, 82-130, 82-164, 84-210, 84-212, 86-255, 86-275, 97-660, and 99-719.

Alabama Canons of Judicial Ethics, Canons 3C(1)(c), 3C(1)(d)(ii), and 5C.

This opinion is advisory only and is based on the specific facts and questions submitted by the judge who requested the opinion pursuant to Rule 17 of the Rules of Procedure of the Judicial Inquiry Commission. For further information, you may contact the Judicial Inquiry Commission, P. O. Box 303400, Montgomery, Alabama 36130-3400; tel.: (334) 242-4089; fax: (334) 353-4043; E-mail: jic@alalinc.net.