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## Judicial Inquiry Commission

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The Judicial Inquiry Commission has considered your request for an opinion concerning the propriety of certain real estate transactions by a judge. Your concern is whether the transactions would be prohibited under Canon 5C, governing financial activities and 3C, governing disqualification.

Under the fact situation presented, the judge owns downtown property which he wishes to lease to a newspaper of general circulation in the county. The newspaper will use the property to open a branch office. The newspaper is a closely held corporation, whose principal stockholder is a man of varied business interests. The major stockholder is reputed to be a substantial stockholder in two local banks, possibly being an officer and director of each. The newspaper is operated on a day-to-day basis by its managing editor (not the major stockholder). All landlord/tenant dealings would be between the judge and the managing editor.

Under these facts the judge assumes, correctly, that he would be disqualified from hearing any proceeding in which the newspaper is named as a party.

Given the above facts, several questions are presented to the Commission. These questions are:

1. Is the judge disqualified from hearing a case in which one or more of the litigants are stockholders in the newspaper?
2. Would the judge be disqualified from hearing a case in which a named party is a corporation and one or more stockholders of the corporate litigant was also a stockholder in the newspaper?
3. May the judge lease the property to an individual, who then leases the property to the newspaper, all priority of the contract being between the individual and the judge?

Your fourth question assumes that the lease arrangement causes the judge's disqualification in the above-cited instances. Since it is the opinion of the Commission that disqualification is not required in these situations, it is unnecessary to answer this question.

Canon 3C of the 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, 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.

Considering these Canons, it is the opinion of the Commission that the mere fact that a litigant is a major stockholder in a company, which leases the judge's property, does not disqualify a judge from sitting in a proceeding in which the stockholder appears as a litigant. Nor is a judge disqualified by the fact that a named party is a corporation, one or more of whose stockholders also owns stock in a company which leases property from the judge. However, in both situations, if it is known to the judge that the outcome of either of these proceedings could substantially affect the judge's lease to the corporation in question, then disqualification is required but may be remitted under Canon 3D.

In answer to your third question, the lease of the property to an individual, who subleases to the corporation, would not affect the judge's disqualification or lack of disqualification as stated above, except that in this instance it must again be known to the judge that his interest in the case will be substantially affected before disqualification will occur.

Yours very truly,  
JUDICIAL INQUIRY COMMISSION