

Judicial Inquiry Commission

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MONTGOMERY, ALABAMA 36104

June 4, 1991

In your letter of April 26, 1991, you request an advisory opinion from the Judicial Inquiry Commission. You present the following questions regarding recusal:

“Blue Cross-Blue Shield is a primary witness in a law suit currently pending before the judge. Counsel for Blue Cross has appeared and informed the court that Blue Cross anticipates intervening as a party in said lawsuit. The judge and his family are covered by a Blue Cross group medical insurance plan for which the judge pays for spouse and dependent coverage. A motion to recuse has been made by opposing counsel. Should the judge recuse himself and, if so, what procedure should be utilized to reassign the case for trial assuming that all other currently elected and sitting judges in this state are also covered by the same medical insurance plan?”

By separate letter dated May 22, 1991, attorney Daniel M. Wilson supplies the following facts:

“Blue Cross does not anticipate intervening as a party in the subject lawsuit. The defendant is a Blue Cross and Blue Shield Subscriber, and pursuant to the policy of insurance to which that subscriber belongs, Blue Cross has a contractual obligation to defend the subscriber under certain circumstances. However, the primary witnesses for the defense are Blue Cross and Blue Shield employees, who will testify at trial.”

The answer to your question involves an interpretation of subsections (1)(c) and (1)(d)(ii) of Canon 3C of the Alabama Canons of Judicial Ethics.

“C. DISQUALIFICATION:

- (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, or his spouse or minor child residing in his household, 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.”

It is the opinion of the Commission that the mere fact that the judge and his family are subscribers to and are insured by Blue Cross-Blue Shield Insurance Company does not constitute a basis for the judge’s recusal where Blue Cross is either a witness or a party to a case pending before the judge. A judge need not disqualify him/her self from a case involving an insurance company where the judge has a policy with that company. Ownership of an insurance policy does not generally constitute a financial interest in the subject matter in controversy as defined by Canon 3C(3)(c). See Advisory Opinion 76-4 (“It is our opinion that your ownership of a life insurance policy in an entity which is a party to litigation before you does not dictate that you should disqualify yourself unless ‘the outcome of the proceeding could substantially affect the value’ of your interest. See Canon 3C(3)(c)(iii).”)

In this case, the judge’s interest should not be considered as a “financial interest” within the meaning of that term as it is employed in Canon 3C(3)(c). It has been recognized that such an interest is not a “financial interest” and is not “substantial”.

“We do not believe, however, that such an interest can properly be considered a ‘financial interest’ within the meaning of that term as it is used in The Code of Judicial Conduct. The interest is analogous to ‘the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest,’ which Canon 3C(3)(iii) states ‘is a “financial interest” in the organization only if the outcome of the proceeding could substantially affect the value of the interest.’”

“Moreover we do not believe that, even if it could be said that the interest of any of the judges in the subject matter of the case in question is a ‘financial interest’ within the meaning of the Canons, it should be regarded as substantial, or that the impartiality of any of the judges might reasonably be questioned.”

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Additionally, the Commission notes that a recusal could conceivably require the disqualification of every judge in the State. "If so, it is possible that under a 'rule of necessity' none of the judges or justices would be disqualified. See United States v. Will, 449 U.S. 200, 214, 101 S.Ct. 471, 480, 66 L.Ed. 2d 392 (1980)." Aetna Life Insurance Co. v. Lavoie, 475 U.S. 813, 825, 106 S.Ct. 1580, 1587, 89 L.Ed. 2d 823 (1986).

Sincerely,

JUDICIAL INQUIRY COMMISSION