

Judicial Inquiry Commission

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February 28, 1992

This is in response to your request for an advisory opinion from the Alabama Judicial Inquiry Commission. Your question is:

“I am presently an active member of the Air Force Reserves. My retirement with the military will be vested in April of 1993, provided I remain qualified and on active reserve status. With this knowledge of my affiliation with the military, please advise me if my vote should be precluded in cases which come before this court that deal with (1) military retirement and/or (2) military retirement pay and/or benefits.”

It is the opinion of the Commission that your recusal is required in any case which could affect your military retirement, pay, or benefits. “It is well settled that a judge is disqualified from presiding over any case in which he or she has a financial or property interest that could be affected by the outcome of that case.” J. Shaman, Bias on the Bench: Judicial Conflict of Interest, 3 Georgetown Journal of Legal Ethics 245, 280 (1989). See also, Aetna Life Insurance Co. v. Lavoie, 106 S.Ct. 1580 (1986). Canon 3C(l)(c) of the Alabama Canons of Judicial Ethics provides that a judge should disqualify himself in a proceeding in which “[h]e knows that he, . . . has a financial interest in the subject matter in controversy . . . or any other interest that could be substantially affected by the outcome of the proceeding.”

Normally, a disqualification under Canon 3C(l)(c) may be remitted as provided by Canon 3D. However, under the particular circumstances of this case, especially the fact that your retirement will vest in the near future, it is the opinion of the Commission that your disqualification should not be waived because of the provisions of Canon 2. Under Canon 2 a judge must conduct himself in a manner which promotes public confidence in the integrity and impartiality of the judiciary avoiding even the appearance of impropriety.

The Commission thanks you for your inquiry.

Respectfully,