

Judicial Inquiry Commission

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November 10, 1992

This is in response to your request for an advisory opinion from the Judicial Inquiry Commission. Your question is whether a trial judge is disqualified to preside over a case in which an insurance company is a party or a real party in interest where your life and property are insured by that company. You describe the "structure" of the insurance company as follows.

"Strictly speaking, (the insurance company) is not a mutual insurance company but, . . . was organized as an 'inter-insurance exchange.' This means that each member theoretically insures all other members and they him or her.

"[The insurance company] is one of the larger insurance companies in the U.S. today. Internal Revenue laws and regulations prohibit excess profits from being retained [by the insurance company]. Therefore, on an annual basis certain profits are credited to a retained 'subscriber's savings account' and excess earnings, if any, are distributed to members.

"As structured, . . . even a catastrophic individual loss would have insignificant effect on an individual member's potential pecuniary interest in the company."

Canon 3C(1)(c), 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, 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."

A "financial interest," is defined by Canon 3C(3)(3)(c) to mean:

"ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:

. . .

(iii) The proprietary interest of a policy holder in a mutual insurance company, or a depositor in a mutual savings association, or a similar proprietary interest is a 'financial interest' in the organization only if the outcome of the proceeding could substantially affect the value of the interest." (Emphasis added).

Canon 3C(3)(c)(iii) does not specifically mention "interinsurance" or "reciprocal" insurance companies. However, it is the opinion of this Commission that a propriety interest in an interinsurance company is "a similar proprietary interest" to that "of a policy holder in a mutual insurance company, or a depositor in a mutual savings association." "While in many ways an interinsurance exchange resembles a mutual insurance corporation, it differs basically from such organization in mechanics of operation and in legal theory, rather than in substance." California State Automobile Association Inter-Insurance Bureau v. Downey, 96 Cal. App.2d 876, 261 P.2d 882, affirmed, 341 U.S. 105, 71 S.Ct. 601, 95 L.Ed. 788 (1950). See G. Couch, 2 Couch on Insurance §18.11 (1984).

Therefore, your propriety interest in the reciprocal or interinsurance company "is a 'financial interest' in the organization only if the outcome of the proceeding could substantially affect the value of the interest." Consequently, it is the finding of this Commission that you are not disqualified under the stated circumstances unless the outcome of the case could substantially affect the value of your interest in the insurance company.

The Commission notes that any disqualification under Canon 3C(1)(c) may be remitted pursuant to the provisions of Canon 3D. Therefore, even if you had a disqualifying "financial interest" in the insurance company, that disqualification could be remitted in the manner provided by Canon 3D.

In Advisory Opinion 76-4 this Commission held that ownership of a life insurance policy in an entity which is a party to litigation before the judge does not dictate that the judge should disqualify him or herself unless "the outcome of the proceeding could substantially affect the value" of the judge's interest. See Canon 3C(3)(c)(iii). In Advisory Opinion 91-425, the Commission held 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.

This opinion has been approved by the Judicial Inquiry Commission. If you have any questions concerning this or any other matter please do not hesitate to contact me.

Respectfully,