

Judicial Inquiry Commission

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April 28, 1995

The Judicial Inquiry Commission has considered your request for an advisory opinion. You asked whether the circuit judges of your circuit are disqualified from presiding over an action by the county and the city-county personnel board seeking a declaration whether a recent act requires the county to increase the salaries of certain probation officers when, under a long-standing statute, one of the three members of the city-county personnel board is appointed to a six-year term by a majority vote of the county probate judge and all circuit judges in the circuit.

As acknowledged in your request for an opinion, this Commission previously has held that a judge who is a member of a personnel board supervisory committee which is the appointing authority for a county personnel board is disqualified from sitting in any proceeding involving the members of that personnel board in their official capacity. This opinion was based upon the general provision in Canon 3C(l) that a judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned. Advisory Opinion 90-399.

However, it is the opinion of this Commission that the circuit judges of your circuit are not disqualified from presiding over the action you describe by their mere position as members of the appointing authority for one of the members of the city-county personnel board. Under the totality of the circumstances you presented (the nature of the suit, that the board is only one of the plaintiffs, that the judges only appoint one of the board's members, the length of the term of that board member, and that the appointment is made by a majority vote of seven circuit judges and a probate judge), any one judge's involvement in the appointment of a board member is too attenuated a relationship for the judge's impartiality to be reasonably questioned.

Of course, if any additional facts exist which would create an appearance of impropriety, disqualification would be required under Canon 3C(l), and any personal bias or prejudice concerning a party would require disqualification under Canon 3C(l)(a). The facts you relate distinguish this case from the one addressed in Advisory Opinion 90-399. However, whichever judge is assigned to the case should examine any additional facts of which he or she is aware to assure himself or herself that his or her impartiality may not reasonably be questioned and also that no personal bias or prejudice concerning a party exists.