Judicial Inquiry Commission

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October 27, 1995

The Judicial Inquiry Commission has considered your request for an opinion whether, under the Alabama Canons of Judicial Ethics, a judge may leave the accumulated amount in his profit sharing account with his old law firm in order to continue to receive earnings on the investments or whether the judge is required to withdraw the accumulated amount in his account. The firm's profit sharing plan is currently administered through Merrill Lynch, and a three person executive committee from the firm directs Merrill Lynch as to the investment of the funds. Since assuming the bench, the judge no longer participates in directing the investment of the funds, nor will any further profit sharing contributions be made to his account. There is no management fee to Merrill Lynch, which receives commissions on transactions. While the judge has a separate account in the profit sharing funds, no particular investments are attributed specifically to that account.

Canon 3C(l) states that a judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned. Canon 5C provides in pertinent part as follows:

> (1) A judge should refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, or exploit his judicial position.
>
> (2) Subject to the requirements of subsection (1), a judge may hold and manage investments, . . and engage in other remunerative activity ...
>
> (3) A judge should manage his investments and other financial interests to minimize the number of cases in which he is disqualified.

Under the facts presented, it is the opinion of the Commission that the judge should withdraw the accumulated amount in the profit sharing account.

Sincerely,

JUDICIAL INQUIRY COMMISSION