

Judicial Inquiry Commission

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April 19, 1996

The Judicial Inquiry Commission has considered your request for an advisory opinion concerning whether disqualification is required under the following circumstances. The judge is a member of a plaintiff class in an action in Pickens County against a local car dealership and GMAC which alleges breach of contract and fraud concerning the interest rate charged on the financing of purchases. The judge recused himself from hearing this suit because he is a member of the plaintiff class. Another suit is pending Fayette County against a different car dealership in that county, GMAC, and an insurance company which alleges breach of contract and fraud concerning credit life insurance purchased with a vehicle. The suit in Fayette County was filed as a class action but the plaintiff has consented to the dismissal of the class aspect of the suit. The judge does not believe that he purchased credit life insurance in connection with the vehicle purchase which causes him to be a member of the plaintiff class in the first suit, and GMAC is unable to locate its records in this regard. The plaintiffs in both suits are represented by the same attorney.

This Commission has previously decided that a judge should disqualify himself in any proceeding where an attorney representing one of the parties is presently representing the judge in another court in an unrelated matter. Advisory Opinions 80-74, 82-168, 88-337, 92-443. These opinions were based upon the provision in Canon 3C(l) that a judge "should disqualify himself in a proceeding in which ...his impartiality might reasonably be questioned." In Advisory Opinion 95-581, the Commission recognized a distinction where the judge is merely a member of a class in the unrelated matter. Although Advisory Opinion 95-581 also involved the Rule of Necessity, the Commission has since determined that a judge who is merely an absent class member is not disqualified under the Canons of Judicial Ethics from hearing unrelated cases in which a party is represented by the attorney who represents the class. Advisory Opinion 95-582.

It is the opinion of the Commission that the fact that GMAC is a defendant in both suits is likewise not a circumstance requiring disqualification of the judge. In this regard, it should be noted that the claims in the two suits are different, GMAC is a large company through which a substantial portion of the population has financed automobile purchases over the years, and the judge is a mere absent class member in the suit in Pickens County.

Finally, under the facts in this case, the judge has no financial interest in the subject matter in controversy or in a party to the proceeding. Thus, he is not disqualified under Canon 3C(l)(c).