

Judicial Inquiry Commission

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January 24, 1997

The Judicial Inquiry Commission has considered your request for an advisory opinion whether a retired circuit judge who has been appointed to serve as an associate justice of a special Supreme Court of the State of Alabama to hear a certain case is disqualified to sit in the matter under the following circumstances. The plaintiff title insurance company claims that the defendant improperly failed to correctly certify title to certain property; one of the partners in the law firm where the retired judge practices 'of counsel' is an agent of the plaintiff for the issuance of policies of title insurance; the retired judge himself has personally performed a title search for a commitment issued by the referred partner of the law firm as agent for the plaintiff; and it appears that the retired judge himself has been authorized to sign binders, policies, and any needed endorsements on behalf of the plaintiff company for the last six months.

It is the opinion of the Commission that the retired circuit judge is disqualified to serve on the special supreme court hearing this case.

A retired judge who is serving as a judge part time in an active duty status is required to comply with Canon 3. Compliance with the Canons of Judicial Ethics, §D(2). Canon 3C(1) provides that a judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned. In this instance, the Commission finds that the other litigants as well as the general public might reasonably question a judge's impartiality in a proceeding by a company alleging malfeasance by an agent where the judge himself has performed and is authorized to perform similar work for that company. See Advisory Opinions 81-123 (judge employed part-time by a party); 83-199 (judge rents office space in a building owned by the judge to a party); and 88-343 (judge has beneficial financial relationship with organization of which defendant is a member). Because the Commission finds that disqualification is required under the general Canon 3C(1) standard requiring recusal when there is a reasonable basis for questioning the judge's impartiality, it does not address whether disqualification also might be required under Canon 3C(1)(c) and the broad definition of "financial interest" in a party contained in Canon 3C(3)(c).

Yours very truly,

JUDICIAL INQUIRY COMMISSION