

## Judicial Inquiry Commission

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The Judicial Inquiry Commission has considered your request for an advisory opinion. Your letter indicates that you and your brother have been renting office space to local lawyers after having received advice from an attorney at the State Bar concerning ethical implications, which advice you have just learned was incorrect or misinterpreted. You request an advisory opinion as to the following matters:

1. Will you still be disqualified in cases involving the attorneys in question if you divest yourself of your interest in the property?
2. What action, if any, need be taken relative to previous cases involving these attorneys?

As your letter recognizes, the Commission has previously held that a judge is disqualified in cases involving an attorney who rents office space from the judge. The Commission has also held that a judge is disqualified if an attorney in the case rents his residence from the judge's wife and her aunt. Advisory Opinion 86-255. As the Commission explained in Advisory Opinion 86-275, these opinions are based upon Canons 5C and 3C, and the concern that a judge's ownership and management of real estate not reflect adversely on the judge's impartiality; a judge's impartiality might reasonably be questioned where the judge's own financial interests could be affected by the financial well-being of an attorney appearing before him.

Under Canon 3C(1) (d) (ii), a judge is disqualified when he or his spouse, or any person within the fourth degree of relationship to either of them, or the spouse of such a person, is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding. Thus, if your brother retains his interest in the property and/or if you transfer your interest to a person within the fourth degree of relationship to you or your spouse by consanguinity or affinity, then you will still be disqualified in those cases where you know that your brother's and/or other relative's rental payments by the attorney-lessee will be substantially affected by the outcome of the proceeding. In Advisory Opinion 86-275, the Commission held that a judge could not avoid disqualification by selling the building in question to his parents prior to its rental to a local attorney in those cases where the judge knew that his parents' rental payments would be substantially affected by the outcome of the proceeding or where under the specific facts and circumstances the judge's impartiality might reasonably be questioned; the Commission also held that the judge should disclose the facts to the parties in any event.

It is the opinion of the Commission that your disqualification in cases involving the attorneys in question in this case will cease when you divest yourself of your interest in the property unless Canon 3C(1) (d) (ii) applies or there are additional facts present under which your impartiality still would reasonably be questioned (Canon 3C(1)). However, any such disqualification is subject to remittal under the procedures in Canon 3D. Advisory Opinion 91-428.

As to your second question, it is the opinion of the Commission that no action on your part is necessary regarding cases that involved the attorneys in question which have already been concluded. The Commission has previously held in other situations that a judge may continue to preside over a case once a prior basis for disqualification ceases to exist, and that there is no ethical obligation to disclose a ground of past disqualification. See, e.g., Advisory Opinions 92-454 and 94-516. There may be exceptions where the parties or their attorneys actually question the judge's ability to be impartial or where extraordinary circumstances are present, but your letter does not suggest that such conditions exist in your situation.

Respectfully submitted,

JUDICIAL INQUIRY COMMISSION