JUDICIAL INQUIRY COMMISSION

DATE ISSUED: MAY 8, 2003 ADVISORY OPINION 03-816

DISQUALIFICATION OF RETIRED JUDGE DUE TO SERVICE AS A MEDIATOR

ISSUE

Is a retired judge disqualified to hear a case in which a party is represented by a member of a certain law firm due to service as a mediator in an unrelated case in which a party is represented by another attorney who is a member of the same law firm? **Answer:** No. However, the Commission recommends that the judge disclose the facts to the parties if he accepts assignment of the case.

FACTS

A retired circuit judge has an active mediation and arbitration practice. He has been requested to preside over a case in another county in which one of the parties is represented by a member of a multi-city law firm. He is currently involved in a mediation in which one of the parties is represented by a member of the same firm who works in the office of the firm located in the city where the judge resides. The parties to the mediation are responsible for his mediation fee. However, his practice is to look to the party's attorney for payment if the client does not pay.

DISCUSSION

Canon 3C(1) states that a judge is disqualified whenever the judge's "impartiality might reasonably be questioned." This general provision is followed by subsections listing some specific circumstances under which a judge's impartiality might reasonably questioned. It does not appear to the Commission that any of the grounds of disqualification stated in the subsections to Canon 3C(1) apply.

Would the judge be disqualified under the general disqualification provision?

> "Recusal is required under Canon 3C(l) when 'facts are shown which make it reasonable for members of the public or a party, or counsel opposed to question the impartiality of the judge.' *Acromag-Viking v. Blalock*, 420, So.2d 60, 61 (Ala. 1982). See, also, *Wallace [v. Wallace*, 352 So.2d 1376, 1379, (Ala.Civ.App. 1977)]. Specifically, the Canon 3C(l) test is: 'Would a person of ordinary prudence in the judge's position knowing all of the facts known to the judge find that there is a reasonable basis for questioning the judge's impartiality?' Thode, *The Code of Judicial Conduct - The First Five Years in the Courts*, 1977 Utah L.Rev. 395, 402."

Matter of Sheffield, 465 So.2d 350, 355-356 (Ala. 1984). The question under Canon 3C(1) is not whether the judge is impartial in fact, but rather whether another person, knowing all of the circumstances, might reasonably question the judge's impartiality. *Ex parte Duncan*, 638 So.2d 1332, 1334 (Ala. 1994).

The Commission finds no reasonable basis to question the judge's impartiality under the facts presented. Thus, it is of the opinion that he is not disqualified to hear the subject case. However, the Commission recommends that the judge disclose the facts to the parties in the case should he accept the assignment. This will serve two purposes. First, it will avoid

any issue of appearance of impropriety from arising in the future. Second, disclosure will give the parties the opportunity to supply any additional relevant information that has not yet been considered.

REFERENCES

Alabama Canons of Judicial Ethics, Canon 3C(1).

Ex parte Duncan, 638 So.2d 1332 (Ala. 1994).

Matter of Sheffield, 465 So.2d 350 (Ala. 1984).
