

JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 99-719

DISQUALIFICATION WHERE ATTORNEY
SUBLEASES OFFICE IN BUILDING OWNED
BY JUDGE

ISSUE

Is a judge disqualified to hear cases in which an attorney appears who has his office in a building owned by the judge, the space being subleased from the judge's lessee? **Answer:** No, unless the judge knows that his financial interests could be substantially affected by the outcome of the litigation, or there are additional circumstances causing the judge's impartiality to be reasonably questionable.

FACTS

A judge owns an office building that is rented to an attorney who does not practice in the judge's court. Pursuant to the written lease, the lessee is responsible for paying rent and utilities. The lessee has the right to sublease portions of the building without the judge's permission. The same amount of rent is due the judge whether or not the lessee subleases any of the building. Sublease of a portion of the building to an attorney who practices in the judge's court is contemplated.

DISCUSSION

Canon 3C of the Alabama Canons of Judicial Ethics provides the following, in pertinent part:

(1) a judge should disqualify himself in a proceeding in which his disqualification is required by law or his impartiality might reasonably be questioned, including but not limited to instances where:

© He knows that he, individually or as a fiduciary, ... has a financial interest in the subject

matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding.

(d) He or his spouse, or a person within the fourth degree of relationship to either of them, or the spouse of such a person:

(ii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding.

"Canon 5C prohibits a judge from owning or managing real estate where to do so reflects adversely on his impartiality, interferes with the proper performance of his judicial duties, or exploits his judicial position. Otherwise, a judge may own or manage real estate investments." Advisory Opinion 84-210.

The Commission has twice addressed issues of disqualification in the context of the sublease of property owned by a judge. In Advisory Opinion 84-212, the Commission decided that a judge is not disqualified to hear an action in which a party is the sublessee of property owned by the judge, all priority of contract being between the judge and the individual lessee, unless the judge knows that his interest will be substantially affected by the outcome of the proceeding. In Advisory Opinion 86-275, the Commission decided that a judge is disqualified where the judge leases property with the unlimited right of sublease and the sublessee is an attorney appearing before the judge where the judge knows that his financial interests will be substantially affected by the outcome of the proceeding, or where additional circumstances exist causing his impartiality to be reasonably questionable.

These decisions follow from other opinions finding judges to be disqualified when an attorney in the case rents property directly from the judge or the judge's spouse. Advisory Opinions 81-115, 82-130, 86-255, and 97-660. These opinions were based upon the judge's impartiality being reasonably questionable. The Commission has explained that a judge's impartiality is reasonably questionable where the judge receives income as a financial benefit from an attorney or law firm occupying a building owned by the judge or the judge's spouse, and the financial benefit or income may depend on the financial success of the attorney or law firm. Advisory Opinion 82-164.

The Commission reaffirms its decision in Advisory Opinion 86-275. A judge is not disqualified where an attorney appears who subleases his office space from the judge's lessee unless the judge knows that his financial interests could be substantially affected by the outcome of the proceeding, or there are additional circumstances causing the judge's impartiality to be reasonably questionable.

REFERENCES

Alabama Advisory Opinions 81-115, 82-130, 82-164, 84-210, 84-212, 86-255, 86-275, and 97-660.

Alabama Canons of Judicial Ethics, Canons 3C(1)(c), 3C(1)(d)(ii), and 5C.

This opinion is advisory only and is based on the specific facts and questions submitted by the judge who requested the opinion pursuant to Rule 17 of the Rules of Procedure of the Judicial Inquiry Commission. For further information, you may contact the Judicial Inquiry Commission, 800 South McDonough Street, Suite 201, Montgomery, Alabama 36104; tel.: (334) 242-4089; fax: (334) 240-3327; e-mail: jic@alalinc.net.