



JUDICIAL INVESTIGATION COMMISSION

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March 8, 2001
JIC Advisory Opinion 2001-05

Dear Judge :

In a recent request for an advisory opinion you stated that you are one of two circuit judges in the Judicial Circuit. During the period of time when you were engaged in the private practice of law, a law suit was brought against you and one of your clients by a third party who was represented by an attorney named . Mr. was plaintiff's counsel in the action against you personally as well as your former client. Ultimately the lawsuit was resolved and settled and you were dismissed out of the lawsuit for the payment of \$1.00. After the settlement of that particular lawsuit you ceased to represent your former client and another attorney represents that person now. You stated that to your knowledge there is no other litigation against your former client arising out of that matter, however, it was your understanding that there still remains some issues regarding whether your former client has complied with the terms and conditions of the settlement. You stated that it appeared that the plaintiff and his counsel, , have made allegations against your former client which would rise to civil, if not criminal matters, if proven. has several cases pending before your court. You asked whether you could sit as a judge on those cases or whether you should disqualify yourself from hearing them.

In another question you asked whether it would be a conflict of interest for you to hear matters and preside over the trial of an adult co-defendant where you represented the other co-defendant. You represented a defendant by the name of who was charged with felonies in your circuit along with his brother, . Since you have a conflict with regard to , another judge is handling that matter. You asked whether you would also have a conflict in presiding in the trial or hearing matters involving the co-defendant, , who you did not represent or confer with regarding the allegations or changes.

To address your first question, the Commission has reviewed the applicable sections of Canon 3E. That Canon states in relevant part:

March 8, 2001

Page Two

Canon 3. A judge shall perform the duties of judicial office impartially and diligently.

E. Disqualification. (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

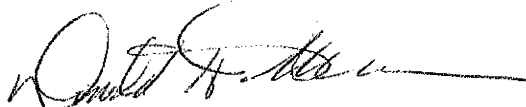
- (a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;
- (b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it; . . .

The commentary following Canon 3E(1) states that "a judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification." Based on the language contained in the relevant sections of Canon 3E, it is the opinion of the Commission that in answer to your first inquiry you should disclose the litigation which occurred and afford an opportunity for counsel or the parties to file a motion to recuse you. There would be no per se disqualification required on your part.

To address the second inquiry which you have made, it is the opinion of the Commission that if you represented the co-defendant in a separate case you should disclose that fact but you would not be prevented per se from hearing the matter. If you represented the co-defendant in the same case which is pending you could not be the judge in the matter pursuant to the relevant language contained in Canon 3E of the Code of Judicial Conduct.

It is hoped that this fully addresses the questions which you have raised. If there is any further question regarding this matter, do not hesitate to contact the Commission.

Very truly yours,



Donald H. Cookman, Chairperson
Judicial Investigation Commission

DHC:nb