



JUDICIAL INVESTIGATION COMMISSION

Post Office Box 1629
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July 31, 2007

Re: JIC Advisory Opinion 2007-17

Dear

In a recent letter to the Judicial Investigation Commission you asked for an advisory opinion on the following questions:

Is a judge disqualified from presiding in a case in which a lawyer is a party when the same lawyer regularly appears in the judge's court as counsel in other unrelated cases?

If the judge is disqualified in presiding in the cases in which the lawyer is a party, is the judge also disqualified in the cases in which the same lawyer appears only as counsel?

You stated that these questions are precipitated because of the different ways the circuits answer the questions. In some circuits when a local lawyer has been named plaintiff or defendant, all the judges in the circuit routinely recuse themselves and a judge from another circuit or a senior status judge is appointed by the Supreme Court to preside in the lawyer's personal case. Whereas, in other circuits the fact that a local lawyer is sued is not considered a disqualifying event. Some judges will not handle cases in which local lawyers are parties while some judges handle those types of cases in their circuits and also handle the cases of the judges that won't. You indicated that it was time for uniformity one way or another.

To address the questions which you have raised, the Commission reviewed Canon 3 of the Code of Judicial Conduct which states in relevant part:

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

B. Adjudicative responsibilities.

- (1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

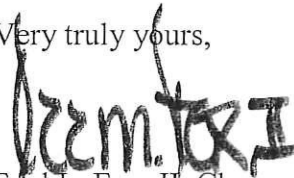
E. Disqualification.

- (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, . . .

After reviewing this language contained in Canon 3, it is the opinion of the Commission that each judge confronted with the situations that you described in your correspondence should take such action as that judge feels appropriate under the language and requirements set forth in those relevant sections of Canon 3. It would remain each judge's individual decision on how to handle those situations. Ultimately, the Chief Justice of the Supreme Court of Appeals would determine if recusal is appropriate in those cases where the judge decides to recuse himself/herself from a given case.

It is hoped that opinion addresses the issues which you raised in your correspondence. If there is any further question regarding this matter do not hesitate to contact the Commission.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Fred L. Fox, II". The signature is stylized with a large, looped "F" and "L".

Fred L. Fox, II, Chairperson
Judicial Investigation Commission

FLF,II:nb