



JUDICIAL INVESTIGATION COMMISSION

City Center East - Suite 1200 A
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December 31, 2019

Re: JIC Advisory Opinion 2019-28

Dear Judge

Your recent request for an advisory opinion was recently reviewed by the Judicial Investigation Commission. The factual scenario giving rise to your request is as follows:

You were elected to the bench in May 2018 to a multi-judge/multi-county jurisdiction. The counties include _____ and _____, and there are six judges in the circuit. Four judges sit in _____ County, one judge is in _____ County, and you serve _____ County. While you can hear any cases originating in any of the counties in your circuit, your case load is primarily limited to _____ County and conflict cases arising out of _____ County. In fact, since taking office you have only heard one _____ County case which occurred after all of the judges sitting there recused themselves.

Before becoming a judge, you were a partner in a small law firm physically located in _____ County. Your firm owned the house where your law office was located. When you became judge, you liquidated your partnership and you divested yourself from the firm's 401k retirement plan. However, you are still a 1/3 owner of a separate LLC that owns the real estate in _____ County in which the last of your former law partners still practices law.

The third partner retired several years before your election in May 2018. At the time of your election, your last remaining partner said that he planned on retiring fairly soon and you expected that the real estate would then be sold. The partner has not filed any cases in _____ County, but had he done so, you would have quite rightly recused yourself. Other than receiving an annual accounting and this year, a small profit from

rents after taxes and repairs, you have no involvement in the management of the building. As you say, you have “in all respects been a silent owner and it has had no effect on my judicial duties.”

The last remaining partner is moving forward with retirement, and he recently advised that he has received an offer from a small personal injury law firm to rent the building with a four year purchase option. You have not participated at all in any discussions with the potential renter directly or indirectly. You have no idea whether that new firm will be filing cases in County but you recognize that it could at some point. You want to know if you violate Rule 3.11 of the Code of Judicial Conduct if the LLC of which you are still a member rents the office space to the firm.

To address your first question the Commission has reviewed Rule 3.11 of the Code of Judicial Conduct which states:

Rule 3.11 – Financial, Business, or Remunerative Activities

- (A) A judge may hold and manage investments of the judge and members of the judge’s family. . . .
- (C) A judge shall not engage in financial activities permitted under paragraphs (A) and (B) if they will:
 - (1) interfere with the proper performance of judicial duties;
 - (2) lead to frequent disqualification of the judge;
 - (3) involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves; or
 - (4) result in violation of other provisions of this Code.

Over the years, the JIC has issued several advisory opinions on the issue of judges renting property to lawyers and has carved out some exceptions for judicial officers who already owned rental property before taking the bench.

In a JIC Advisory Opinion dated January 22, 1991, the Commission held that a judicial officer who owns rental property and has lawyers for tenants engages in unethical conduct unless the judicial officer does one of the following: “(1) sells the property; (2) refers all tenant lawyers to another judge in the circuit for their hearings; or (3) rents only to non-lawyers.” The Commission noted that failure to take one of these actions “could suggest partiality, could interfere with the performance of judicial duties, and could

involve the judicial officer in frequent transactions with lawyers likely to come before his or her court.”

The course of action taken by necessity turns on the distinction of facts occurring in each case. While the Commission believes the most appropriate courses are divestiture of the property or renting to non-lawyers, it also finds that in limited circumstances as in this case that a judge may rent his or her property to a lawyer. In this instance, you already own the property and your former partner was occupying the space; there is an option to purchase in the rental agreement; you are in a multi-judge circuit; you sit in

County and the property is located in ; the firm does personal injury work which is less likely to come before you than more high-volume cases such as criminal and abuse and neglect; and you will disqualify yourself from any cases involving the firm. You have an obligation to publicly disclose the rental agreement and must report the income pursuant to Rule 3.15 of the Code of Judicial Conduct or other applicable law. Furthermore, the Commission is of the opinion that you must revisit the arrangement on an ongoing basis and if you find that it is leading to your frequent disqualification from cases then you should immediately divest yourself of the property.

It is hoped that this opinion fully addresses the issues which you have raised. Please do not hesitate to contact the Commission should you have any questions, comments or concerns.

Sincerely,



Alan D. Moats, Chairperson
Judicial Investigation Commission

ADM/tat