



Advisory Committee on the Code of Judicial Conduct

Hon. Frank H. Allen, Jr. Chairman
Hon. Thomas A. Donnelly
Prof. William T. MacPhearson, Jr.
Hon. Marie Baca

The Honorable

April 30, 1997

Judicial Advisory Opinion 97-06

Dear Judge

You have indicated to us by letter that you own a small ownership interest in an office complex that rents to two attorneys who do a considerable volume of appellate work before your court. The property is owned by a general partnership of which you are a minor partner. The rent is paid to the general partnership.

You have asked if the Code of Judicial Conduct requires that you recuse from hearing cases in which the tenants appear as counsel of record.

21-500 D. provides as follows:

(1) A judge shall not engage in financial and business dealings that:

(a) may reasonably be perceived to exploit the judge's judicial position; or

(b) involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.

(2) A judge may, subject to the requirements of this Code, hold and manage investments of the judge and members of the judge's family, including real estate, and engage in other remunerative activity.

(4) A judge shall manage the judge's investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge shall divest himself or herself of investments and other financial interests that might require frequent disqualification.

The "commentary" following D(1) states in part:

A judge must avoid financial and business dealings that involve the judge in frequent transactions or continuing business relationships with persons likely to come either before the judge personally or before other judges on the judge's court...this rule is necessary to avoid creating an appearance of exploitation of office or favoritism and to minimize the potential for disqualification.

Although the Code allows a judge to hold and manage investments of the judge including real estate the judge shall not be involved in continuing business relationships with lawyers likely to come before the court which the judge serves. The judge must avoid investments that result in actual or apparent partiality.

In our research we were able to find several opinions from other states with identical code provisions concerning judges holding real estate that is rented to lawyers or other persons likely to come before the court on which the judge serves.

In a Louisiana Advisory Opinion 123 (March 21, 1995) a Supreme Court Committee indicated that a judge who leased his former law office building to Evangeline Psychiatric Care, Inc. (E.P.C.) should be sensitive to the ethical implications of this activity since E.P. C treats juveniles who appear before the court. Under no circumstances could the rent be determined by the number of juveniles who elected E. P. C. as a result of the terms of their court ordered probation.

A Texas Advisory Opinion 179(1995) also considered a judge owned office building wherein the judge had conveyed ownership of the building to a trust established to benefit the judges minor children. The office building was rented to lawyers who practice in the judges court. The opinion states
as follows :

It is the Committee's opinion that the judge cannot allow lawyers to appear in his court when those lawyers are renting his former law office from a trust established to benefit his minor children who are living in the judge's household. If this relationship continues, public confidence in the integrity and impartiality of the judiciary would be diminished, and the public would have the impression that some lawyers are in a special position to influence the judge.

A South Dakota Advisory Opinion 95-2 (1995) also considered this question. A judge deeded the office building in which he practiced to his wife. The wife manages the building and leased space to a lawyer who practices before the judge. This commission by unanimous opinion held that such an arrangement creates an appearance of impropriety and violates South Dakota's Canons. The commission cites advisory opinions from West Virginia, New York and Alabama with the same result.

In your letter you ask if recusal is necessary and indicated this "would cause more than minor assignment difficulties ". Paragraph D(4) indicates

that recusal or disqualification is not sufficient in that the judge shall divest himself or herself of investments and other financial interests that might require frequent disqualification.

The committee is aware that your interest in the building is small but the consideration is the appearance of impropriety of continuing business relationship with lawyers who practice in your court even though that relationship is not actually improper or an exploitation of the judicial office.

While arraigning for divesting of your interest an alternative to recusing would be to make full disclosure of the situation to all interested parties and determine if the parties are willing to waive any objections.

Very truly yours,

Frank H. Allen, Jr.
Chairman, Judicial Advisory
Committee

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Advisory opinions referred to are enclosed.