



Judicial Ethics Advisory Committee

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MEMBERS;

Hon. Edwin Alderson
Municipal Judge Retired

Prof. Howard W. Brill

Hon. Steele Hays
Associate Justice Retired

May 6, 1997

The Honorable Charles A. Yeargan
Office of Circuit/Chancery Judge
Ninth West Judicial District
225 South Washington
P.O. Box 820
Murfreesboro, Arkansas 71968

Re: Advisory Opinion 97-03

Dear Judge Yeargan:

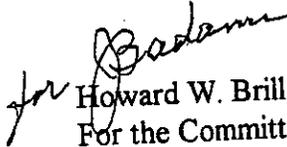
Your letter of April 25, 1997 advises us that on taking office on January 1 you sold your law office personal property to an attorney, who continues to rent office space from you. In addition to maintaining a private practice, the attorney is a part-time prosecuting attorney.

Canon 3E requires that a judge disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned. It is the opinion of this committee that reasonable individuals, within and without the legal community, might question the impartiality of a judge who has an on-going financial relationship as landlord of one of the attorneys. See Shaman, Lubet & Alfini, Judicial Conduct and Ethics (2nd ed. 1995). § 4.19. The judge has the duty to raise the issue of disqualification even if the attorneys do not. Edmonson v. Farris, 263 Ark. 505, 565 S.W. 2d 617 (1978). Accordingly, in any proceeding, whether civil or criminal, in which the attorney appears or is the attorney of record, you should recuse. In the alternative, you may disclose on the record the basis for your disqualification. Pursuant to Canon 3F, you "may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification". An agreement of all that you should not be disqualified should be incorporated into the record.

We also note that Canon 4D(1) states that "A judge shall not engage in financial and business dealings that: . . . (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". The purpose of this rule is to minimize the potential for disqualification and to avoid creating an appearance of exploitation of office or favoritism.

We have no way of knowing how frequently the issue of disqualification will arise in this context. However, we do note that the Compliance section of the Code of Judicial Conduct requires the judge to comply with the business provisions of the code "as soon as reasonably possible and shall do so in any event within the period of one year".

Sincerely,


Howard W. Brill
For the Committee