Current Canon is Canon 3E.

JUDICIAL ETHICS OPINION JE-41

Formal

Question #1: When a member of a law firm becomes a judge, may he receive his normal percentage of fees for work done by the firm?

Answer: Yes, as to work already done when he left the firm.

Question #2: Must the judge disqualify himself in new litigation handled by his former firm?

Answer: Qualified no.

Question #3: Must the judge disqualify himself in matters being handled by an associated firm in another city, where the judge has not participated in those matters and did not share in its profits?

Answer: Qualified no as to new cases; yes as to old cases.

Question #4: Must the judge's name be deleted from the firm name?

Answer: Yes.

References: SCR 4.300, Canon 3C; Thode, Reporter's Notes to Code of Judicial Conduct (American Bar Foundation 1973); American Bar Association Informal Ethics Opinions #594, 1215, and 1306; U.S. Judicial Conference, Advisory Opinion #24; American Bar Association Disciplinary Rule 2-102(b).

Opinion: (November 1982)

QUESTION #1:

We have already held, in our Judicial Ethics Opinion JE-32, that a judge may receive compensation for work which he did before becoming a judge, even when that work was not completed by him at the time of his ascent to the bench. This holding applies equally to the solo practitioner, to the salaried associate of a firm, and to a partner who receives a given percentage of the firm's fees.

Some guidelines may be helpful. As we stated in JE-32, the division of fees between the judge and the lawyer who completes the work should be reasonable and in proportion to the services performed by each of them. The fees should, of course, be in accordance with the rules of professional conduct. Full disclosure should be made to the client. Also, the judge may share in fees to be collected in the future as long as the work was done before he left the firm.

In accord with our holding and the guidelines announced here are U.S. Judicial Conference Advisory Opinion #24 and American Bar Association Informal Ethics Opinion #1215.

QUESTION #2:

Questions of disqualification of a judge are governed by SCR 4.300, Canon 3C. That Canon specifically requires the judge to step down in several situations, including cases in which he participated as a lawyer, and those which were already in his firm before he left it. In addition to stated grounds for disqualification, Canon 3C contains a general standard:

> A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned....

In discussing this language, Thode, in Reporter's Notes to Code of Judicial Conduct (American Bar Foundation 1973) says at page 60:

> Any conduct that would lead a reasonable man knowing all the circumstances to the conclusion that the judge's "impartiality might reasonably to questioned" is a basis for the judge's disqualification.

These questions have been addressed in two American Bar Association Ethics Opinions. Informal Opinion 594, under the old, more general, Canons suggests stepping aside in cases which were already in the firm before he became a judge, and in the cases where a near relative of the judge is associated with the firm. These situations are now explicitly covered by Canon 3C. The opinion continues with this language:

> Your former firm and its clients, just as in the case of other clients, are entitled to the benefit of your judgment on the court in the cases presented, unless there is disqualification or some consideration of the character indicated above which would cause you to decline to sit. In the final analysis it must be left to the good judgment and conscience of the individual judge.

That opinion was quoted with approval in ABA Informal Opinion 1306, decided under the new Canons.

We agree with those opinions, and hold that questions of disqualification which are not specifically covered by Canon 3C must be decided by the judge, with due regard to the factors which might reasonably lead to doubts of his impartiality.

QUESTION #3:

The same considerations which we outlined in the answer to the second question apply here. We are informed that the judge "does not participate in any of the matters handled by" the associated firm, and that "he receives no part of its fees." But the public cannot be expected to know those things. The public knows only that there is a connection between the two firms. For those reasons we hold that the sanctions of Canon 3C apply to cases coming from the associated firm to the same extent that they apply to cases coming from his own firm. Thus, he must disqualify himself in cases which the associated firm was handling when he became a judge. As to new cases, the criteria outlined in our answer to the second question apply here, with questions of disqualification being left to the good judgment and conscience of the judge.

QUESTION #4:

There can be no question that the judge's name must be removed from the firm's name. The American Bar Association Disciplinary Rule 2-102(b), made applicable to Kentucky lawyers by SCR 3.130(1), reads in part as follows:

> ... A lawyer who assumes a judicial ... post or office shall not permit his name to remain in the name of a law firm or to be used in professional notices of the firm during any significant period in which he is not actively and regularly practicing law as a member of the firm, and during such period other members of the firm shall not use his name in the firm name or in professional notices of the firm.

The judge thus has a duty to see that his name is removed, and the firm has a like duty.

B. M. Westberry, Chairman
Ethics Committee of the Kentucky Judiciary