

Judicial Inquiry Commission

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January 23, 1998

The Judicial Inquiry Commission has considered your request for an advisory opinion whether a judge is disqualified from hearing an action for false arrest and false imprisonment when one of the defendants is a member of the circuit clerk's staff. The complaint alleges the defendant in question, who was acting in her capacity as a magistrate, conspired with the sheriff to issue an arrest warrant that was not supported by sufficient facts to establish probable cause.

It is the opinion of the Commission that a judge is not disqualified from hearing an action merely because it alleges improper action by a magistrate who is a member of the clerk's staff in the judge's judicial circuit. This question is governed by the general provision in Canon 3C that a judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned. Special circumstances might exist in which a judge would be disqualified in such a case. If the judge is responsible for the clerk's appointment as a magistrate, or if there are any other additional circumstances that create an appearance of impropriety, the judge is disqualified from hearing the case. However, the mere fact that a defendant is a magistrate in the clerk's office is insufficient to raise a reasonable question concerning a judge's impartiality. Of course, a judge also is disqualified under Canon 3C(1)(a) if he has a personal bias or prejudice as a result of association with a magistrate/defendant such that the judge doubts his ability to impartially decide the case, or if the judge has personal knowledge of disputed evidentiary facts.

Yours truly,

JUDICIAL INQUIRY COMMISSION