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JUDICIAL ETHICS OPINION JE-10

Informal

QUESTION: In a county in which the district court trial commissioner is paid in part by the fiscal court, should the district judge disqualify himself in a malfeasance case against a member of the fiscal court?

ANSWER: He need not disqualify unless there are particular circumstances which might indicate prejudice or lack of impartiality.

REFERENCE: SCR 4.300, Canon 3C(1).

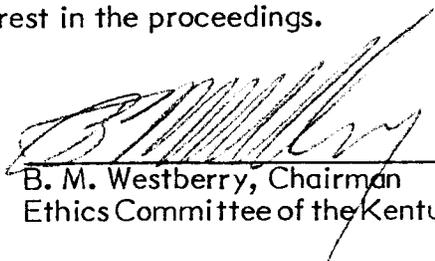
OPINION: (July 1980)

Canon 3C reads in part as follows:

- (1) A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where:
 - (a) he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding; ...

The remainder of Canon 3C deals with specific situations in which the judge should disqualify himself, including such things as relationship to a party or to an attorney, or a financial interest in the suit. Your situation does not fall within any of these specific categories, but the quoted parts of Canon 3C provide general guidelines for those situations which do not fall within the specific disabilities.

The test is necessarily subjective, and you should ask yourself whether the public might reasonably question your impartiality if you preside in this case. In general, judges step aside in touchy situations in order to preserve the appearance of impartiality, even in cases which they feel that they can in fact be impartial. It might be added that your trial commissioner would be wise to step aside in any proceedings against the member of the fiscal court because it might be said that he has a direct financial interest in the proceedings.


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