

Judicial Inquiry Commission

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The Judicial Inquiry Commission has considered your request for an opinion concerning whether a judge is disqualified from sitting in a certain proceeding. The facts surrounding this request are complicated and are therefore set out in some detail.

The lawsuit in question is the fourth in a series of lawsuits involving the same piece of property. The plaintiffs in the present case filed this suit for possession of certain land. Plaintiffs claim that their right to possession arises out of a foreclosure sale in which the property then owned by the defendants and mortgaged to the plaintiffs was purchased by the plaintiffs. This suit is presently pending in the Circuit Court of Clark County and the judge in this case is not related by blood or marriage to either of the parties or the attorneys for the parties. However, a defendant in the present case has filed a motion for the judge's recusal. Among the numerous grounds listed for recusal are the following:

- 1) The judge's brother is the law partner of the defendant's brother-in-law, neither of whom are attorneys in this case.
- 2) Another attorney in the judge's brother's law firm operates a company in which the judge is a 6.5% owner and which is regulated by the State Oil and Gas Board of which the plaintiffs' attorney is a member.
- 3) In an earlier now completed lawsuit concerning the same real property the present defendant had requested the judge to recuse himself after a stipulation and agreement between the parties had been accepted and ordered by the court. That motion was based upon the judge's relationship to a member of a law firm involved in the lawsuit. The judge had previously made known his relationship and the parties and their attorneys signed a waiver of disqualification.
- 4) The present defendant claims that the outcome of the present proceeding will have a direct impact on a proceeding in court in another county in which the judge recused himself because of his relationship by marriage to the attorney for one of the parties. The present defendant is a plaintiff in that proceeding and the judge's wife's relation represents an opposing party.

To fully assess whether the judge's recusal is required a short history of the four separate lawsuit proceedings involved is necessary.

First in 1981, the present defendants sued the present plaintiffs to enjoin the plaintiffs' attempts to foreclose on the property, the subject of the present lawsuit. This is the proceeding referred to in number 3 above in which the judge made known his disqualification to the parties and their attorneys, disqualification was properly remitted and a stipulation and agreement for settlement was filed by the parties and accepted by the court. Subsequently, when a question arose regarding the enforcement of the stipulation and agreement, attorneys for all parties agreed on a settlement, and the judge asked one of the attorneys to draft an order. This same party then requested the judge to disqualify himself based on the already remitted disqualification. He refused to do so since for all practical purposes the lawsuit had ended.

The second lawsuit is not mentioned in the present request for recusal. There, in 1982 the present defendant again sued the present plaintiff concerning a second attempted foreclosure on the same property. The trial court ruled in favor of the defendants (present plaintiffs) that foreclosure was proper and refused to set aside the foreclosure sale. The trial court was affirmed by the Alabama Supreme Court and the mandate issued on April 10, 1984.

The third lawsuit was again filed by the present defendants against the present plaintiffs and against the bank through which the present defendants made mortgage payments. (The present plaintiffs held the mortgage and apparently purchased the mortgaged property at the foreclosure sale.)

This suit appears to be for damages based on negligence and harassment and was filed March 10, 1983, almost one year prior to the issuance of the Alabama Supreme Court's decision in the preceding case. In this third case, the judge recused himself due to his wife's relationship to the bank's attorney.

Now in the present case, the fourth one filed, the defendants (plaintiffs in the preceding three lawsuits) claim that the outcome of these proceedings involving possession of the property will have a direct effect on the third lawsuit. This does not appear to be the case since the Supreme Court has in essence upheld the foreclosure sale. Thus, ownership of the property has already been determined.

Based on the foregoing facts and history of the proceedings, it is the opinion of the Commission that the judge is not disqualified from sitting in the proceeding in question. None of the grounds set out for disqualification set out in Canon 3C(l) have been met.

Very truly yours,

JUDICIAL INQUIRY COMMISSION