

Judicial Inquiry Commission

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April 30, 1985

The Judicial Inquiry Commission has considered your request for an opinion concerning whether a judge is disqualified or should recuse himself in certain proceedings. Under the facts presented, prior to the judge assuming the bench, his law partner represented the FDIC in collection proceedings arising out of the liquidation of a certain bank. Also, the judge represented the executrix of an estate which owned outstanding shares of the bank. The estate will be entitled to share in the distribution of the bank assets. The specific question presented is whether the judge is disqualified from hearing the FDIC petition for final settlement of the dissolution of the bank in question.

It is the opinion of the Commission that the judge is disqualified from sitting in the described proceeding. Our decision is based on Canon 3C of the Alabama Canons of Judicial Ethics. That Canon provides in pertinent part:

- “(1) A judge should disqualify himself in a proceeding in which his disqualification is required by law or his impartiality might reasonably be questioned, including but not limited to instances where:

* * * *

- (b) He served as a lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer in the matter ...”

It is the opinion of the Commission that under the stated circumstances the judge's impartiality might reasonably be questioned due both to the judge's having represented the estate and the judge's law partner's association with the FDIC in the liquidation matters while the judge was still associated with the law firm. Although, technically, neither the judge nor his law partner may have been attorneys in the “matter in controversy”, the matters in which they did serve as attorneys were so closely related as to cause disqualification. This disqualification is not one that can be remitted under Canon 3D.

Yours very truly,

JUDICIAL INQUIRY COMMISSION