

87-300  
87-301  
87-302

## Judicial Inquiry Commission

800 SOUTH MCDONOUGH STREET  
SUITE 201  
MONTGOMERY, ALABAMA 36104

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The Judicial Inquiry Commission has considered your request for an opinion concerning several matters. Your questions are whether, under the Alabama Canons of Judicial Ethics, a judge is disqualified from sitting in certain proceedings. Each question is set out below:

1. Whether a judge is disqualified from sitting in a proceeding where one of the attorneys has previously bought out the judge's law practice and is paying off a debt incurred by the judge as an attorney. The debt continues to be carried on the creditor's books in the judge's name.  
**87-300**
2. Whether a district court judge, sitting by special assignment as a circuit court judge, is disqualified from hearing appeals from his own court wherein another judge originally heard the case at the district court level.  
**87-301**
3. Whether a district court judge, sitting specially as a circuit court judge, is disqualified from hearing appeals from his own court wherein he originally heard the case at the district court level. Would it make any difference if the appeal is before a jury?  
**87-302**

It is the opinion of the Commission that under Canon 3 of the Alabama Canons of Judicial Ethics the judge is disqualified from sitting in all of the above described situations. Canon 3C provides that:

"(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:

\* \* \* \*

"(c) He knows that he ... has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;"

The Commission has previously considered issues involving the application of this Canon where arrangements made for the dissolution of the judge's law practice include financial arrangements between the judge and certain attorneys that continue for a time after the judge assumes the bench. See Advisory Opinions 81-115 and 82-164. In these opinions the Commission found that financial indebtedness owed to a judge by an attorney or a party to a proceeding would cause a judge's disqualification in any proceeding involving that attorney or party. The primary reason for disqualification is obvious. If the litigant or attorney is indebted to the judge, then the judge has an interest in the financial success of the debtor. This would especially appear to be true where an indebtedness to the judge is being paid by the attorney making payments on a debt contracted by the judge. In other words, the judge is looking directly to the attorney to pay a debt contracted by the judge and carried on the creditor's books in the judge's name. If the debt is not paid by the attorney, the creditor will turn to the judge for payment. Therefore, the judge has a direct interest in the financial success of the attorney and an interest that could be affected by the outcome of the proceeding.

Your second and third questions ask whether a district court judge, sitting by special assignment as a circuit judge, can hear appeals from his own court. It is the opinion of the Commission that a district court judge sitting as a circuit judge is disqualified from hearing appeals from his own court. This is true regardless of whether or not the judge heard the original case in district court and whether the appeal to circuit court is to be tried by a jury. Our opinion is based not only on Canon 3C of the Alabama Canons of Judicial Ethics, but also on Canons 1 and 2. Canons 1 and 2 provide:

Canon 1: "A Judge Should Uphold the Integrity and Independence of the Judiciary"

Canon 2: "A Judge Should Avoid Impropriety and the Appearance of Impropriety in All His Activities"

Further, a litigant who appeals de novo to the circuit court is entitled to have his case heard by an impartial judge who has not previously ruled on either the factual or legal issues in the proceeding. An appeal by definition involves a review of matters previously decided. While an appeal de novo is in reality a new trial, it is a new trial primarily based on the same evidence. The litigant is entitled to a new judge who has not previously decided, or made up his mind, as to the matters being tried. Having the same judge hear the appeal would defeat this whole concept.

While these same principals may not at first glance seem to apply where the district judge now sitting as circuit judge did not actually hear the original district court case, the better practice under the Canons would require disqualification. Canon 2A requires that a judge conduct himself so that he:

97-300, 97-301 and 97-302  
Page 3

“... promotes public confidence in the integrity and impartiality  
of the judiciary.”

A system which allows a judge to sit on appeal of matters decided by his own court  
would conflict with these provisions.

Sincerely,

JUDICIAL INQUIRY COMMISSION