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Judicial Inquiry Commission

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May 1 , 1989

The Judicial Inquiry Commission has considered your request for an opinion concerning whether, under the Alabama Canons of Judicial Ethics, a judge is disqualified from sitting in a proceeding in which one party is a bank in which (1) his cousin (we assume within the fourth degree of relationship) is a junior vice-president in charge of a branch or which involves transactions in which the cousin participated; (2) the judge maintains a checking account; (3) the judge's wife maintains a checking account; (4) the judge's wife has an unsecured loan; (5) the judge's daughters maintain money market college funds or (6) the judge maintains a safe deposit box.

Your first question has been addressed in prior opinions by the Commission. Advisory Opinion 86-276 addresses the issue of disqualification where a relative within the prohibited degree serves as a vice president of a bank which is a party to a proceeding. In that opinion, the Commission followed its earlier opinions and found that Canon 3C(l)(d)(i) specifically provides disqualification in this instance. That canon provides that a judge is disqualified if a relative within the prohibited degree:

“Is named a party to the proceeding, or an officer, director, or trustee of a party.”

This disqualification further extends to any proceedings in which the relative is likely to be a material witness, i.e., the relative was directly involved in the transaction on which the proceeding is based. [Canon 3C(l)(d)(ii).] Of course, this disqualification may be remitted by following the remittal procedure found in Canon 3D. **89-366**

The second question has also been addressed in prior opinions of the Commission. In opinions 86-249 and 86-260, it was the opinion of the Commission that the judge's ownership of a bank account creating a bank customer relationship with a certain bank, alone, does not disqualify the judge from sitting in all proceedings involving the bank as a party. However, under Canon 3C(l)(d)(ii), disqualification would occur if the judge's bank account or bank/customer relationship could be substantially affected by the outcome of the proceeding. The provision requires disqualification where either the judge or relative within the fourth degree:

“Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;”

Again, even this disqualification may be remitted under Canon 3D.

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Our opinion concerning the second question applies equally to the third. The bank customer relationship does not in itself cause disqualification unless the judge's wife's bank account could be substantially affected by the outcome of the proceeding.

Remittal of disqualification may be had under the provisions of Canon 3D. **89-368**

The fourth question involves the existence of a small unsecured loan made by the bank to the judge's wife. The Commission has previously addressed this issue in situations where the loans were obtained by the judge rather than his spouse. See advisory opinions 86-276 and 76-5. In those opinions, the Commission advised that the mere existence of the debtor/creditor relationship does not cause disqualification under Canon 3C. However, if additional factors exist such as the granting of special favors or the creation of a personal bias either in favor or against the bank, disqualification would exist. Disqualification based on personal bias cannot be remitted. The Commission finds this reasoning equally applicable to the existence of an unsecured loan by a bank to a judge's wife. The mere existence of the debtor/creditor relationship does not cause disqualification. Of course, if the loan could be substantially affected by the outcome of the proceeding under Canon 3C(l)(d)(iii), disqualification would occur. That disqualification may be remitted under Canon 3D. **89-369**

It is the opinion of the Commission that the existence of a college money market fund owned by the judge's daughter or a safe-deposit box owned by the judge would also not cause the judge's disqualification in proceedings involving the bank unless, of course, these interests could be substantially affected by the outcome of the proceeding. [Canon 3C(l)(d)(iii).] Again, that disqualification may be remitted. **89-370 and 89-371**

We note further that, in the Commission's earlier opinions cited above, the Commission advised that while disqualification is not technically required in the situations involving the mere existence of a bank/customer relationship or a debtor/creditor relationship, the judge should advise the parties of the relationship, and to avoid even the appearance of impropriety, recuse himself if requested to do so.

Sincerely,

JUDICIAL INQUIRY COMMISSION