

## Judicial Inquiry Commission

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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 based on certain circumstances. It appears from the facts presented that the judge is a member of a family partnership engaged in the rental of commercial property. A few days after the judge presided over the trial of a case, one of the lawyers appearing before him filed a petition in bankruptcy on behalf of a tenant and named the partnership as a creditor. The judge believes that a draft of the judgment in the case he tried was probably prepared before the bankruptcy petition was filed, however, the judgment has not been signed by the court.

It is the opinion of the Commission that the mere existence of the filing and pendency of the bankruptcy petition does not cause the judge's disqualification.

Disqualification is governed primarily by Canon 3C(l) of the Alabama Canons of Judicial Ethics. That Canon provides in pertinent part as follows:

A judge should disqualify himself in a proceeding in which his disqualification is required by law or his impartiality might reasonably be questioned.

In numerous previous opinions the Commission, considering these provisions, has advised that a litigant may not cause the judge's disqualification in pending litigation merely by filing suit against the judge in other proceedings. See Advisory Opinions 90-403, 88-326, 86-276, 83-176 and 77-29. We note that the result has been different where a lawyer in a proceeding represents a client in a separate matter filed against a judge. See Advisory opinion 88-337. However, in the present circumstances, we do not believe that the mere filing of a bankruptcy petition naming a partnership involving the judge as a creditor causes the judge's disqualification where the preliminary draft of the final judgment was drafted before the filing or before the judge knew of the petition. The judge may sign the final judgment if it remains substantially unchanged from the preliminary draft. However, the judge should disqualify himself in any subsequent post-trial proceeding.

This opinion is based not only on the advisory opinions previously cited, but also on the standard for disqualification set out in In re Sheffield, 465 So.2d 315, (Ala. 1984). There, our Supreme Court held that disqualification occurs where a reasonably prudent man, knowing all of the facts known to the judge, would question the judge's impartiality. We do not believe the judge's impartiality can be reasonably questioned due to facts and circumstances arising after a final decision has been reached, except

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for fine tuning by the judge. However, if a real adversarial relationship arises between the judge and an attorney to the proceeding after final judgment has been reached, then the judge should disqualify himself from all subsequent post trial proceedings.

Sincerely,

JUDICIAL INQUIRY COMMISSION