

## Judicial Inquiry Commission

800 SOUTH MCDONOUGH STREET  
SUITE 201  
MONTGOMERY, ALABAMA 36104

June 4, 1991

In your letter of May 20, 1991, you request an advisory opinion from the Judicial Inquiry Commission on the following questions:

“Two of my children will be a Senior and a Freshman next year at \_\_\_\_\_ University. To finance their education, I am selling a building that my wife and I own. An attorney who is a sole practitioner has offered to purchase the building with a substantial down payment. He proposes that my wife and I finance the remaining balance over a five-year period. In the event we do not complete the transaction before school starts, another option would be for me and my wife to borrow money on the building to pre-pay the costs of tuition. The attorney would then make a down payment equal to our net equity, assume our loan and make all payments to the lending institution to whom he would be responsible.

Opinion 82-128 seems to be similar to the first option. In the event of owner financing with the sole-practitioner attorney, do I simply disqualify myself in cases brought by the attorney in my court? As to the second option, is there a need for recusal? In either option can I hear cases brought by the attorney if all parties agree in writing? Is either option totally prohibited by the Judicial Canons of Ethics?”

It is the opinion of the Commission that neither option described above is prohibited by the Alabama Judicial Canons of Ethics although disqualification may be required in some circumstances.

In the event the judge and his wife finance the purchase of the building, the judge is required to disqualify himself under Canon 3C(1), Alabama Canons of Judicial Ethics in all cases in which the attorney-purchaser represents a party in a proceeding before the judge. Because the attorney would be substantially financially indebted to the judge, the judge's impartiality might reasonably be questioned in proceedings in which that attorney appears before the judge. See Advisory Opinion 82-128. This type of disqualification is remittable under Canon 3D.

Under option two described above, the attorney-purchaser would assume the loan you and your wife have obtained using the building as security. The attorney would make all loan payments to the lending institution. If you and/or your wife are not liable as guarantors in the event the attorney defaults on the loan, there is no ground for disqualification. However, if you and/or your wife remain liable as guarantors on the

loan assumed by the attorney, or until such time as the loan is fully assumed by the attorney, disqualification is required because your impartiality might reasonably be questioned in any proceeding in which the attorney appears. Canon 3C(l). Furthermore, disqualification is also required if your financial interest as guarantor could be substantially affected by the outcome of the proceeding in which the attorney appears. Canon 3C(l)(c) and (1)(d). These types of disqualification are also remittable under Canon 3D.

A remittal of disqualification under Canon 3D requires the judge to disclose on the record the basis for the judge's disqualification. All parties and lawyers must "agree in writing that the judge's relationship is immaterial or that his financial interest is insubstantial" before the judge is no longer disqualified. The written agreement must be incorporated into the record.

We trust this response has answered your questions.

Sincerely,

JUDICIAL INQUIRY COMMISSION