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## Judicial Inquiry Commission

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April 28, 1995

The Judicial Inquiry Commission has considered your March 9, 1995, request for an opinion concerning whether a judge is disqualified under the Alabama Canons of Judicial Ethics from sitting in a proceeding in which First Alabama Bank, First Alabama Real Estate Financing, or their holding company, Regions Financial Corporation, is a party where (1) the judge is a beneficiary of a trust from which he receives regular distribution and of which the bank is trustee; (2) the judge has checking and savings accounts with the bank; (3) the judge rents a safety deposit box at the bank; (4) the judge's wife is the trustee of a trust for their children and from time to time secures investments through First Alabama Investments; (5) the judge is indebted to the bank through a partially secured loan; (6) the judge has a credit card issued by the bank and there is an indebtedness due on this card; and (7) the judge's first cousin is Vice President and Trust Investment Officer in the bank although he is paid by the holding company.

If a judge has personal bias or prejudice concerning a party, or personal knowledge of a disputed evidentiary fact concerning a proceeding, by virtue of his position as a beneficiary of a trust, then he must disqualify himself in the proceeding. Canon 3C(l)(a), Alabama Canons of Judicial Ethics. Such disqualification is not subject to remittal under Canon 3D. If a judge has a "financial interest" as defined in Canon 3C(3)(c) in either the subject matter in controversy or in a party to the proceeding as a result of being a beneficiary of a trust administered by a bank, or if he has any other interest that could be substantially affected by the outcome of the proceeding, the judge is disqualified under Canon 3C(l)(c). However, any such disqualification is subject to remittal by following the procedure in Canon 3D. **95-554**

In determining whether there is an interest that could be "substantially affected" by the outcome of a proceeding, a judge should consider any benefit he might receive, whether that benefit is such that a reasonable person might question the judge's impartiality as a result, and the remoteness of the interest and its extent or degree. L. Abramson, Judicial Disqualification Under Canon 3C of the Code of Judicial Conduct at 64-65 (American Judicature Society, 1986).

Your second question has been addressed in prior opinions of the Commission. In Advisory Opinions 86-249, 86-260, and 89-367, the Commission found that a judge's ownership of a bank account creating a bank/customer relationship with the bank did not itself disqualify the judge from sitting in all proceedings involving the bank as a party, but that disqualification would occur under Canon 3C(l)(d)(ii) if the judge's bank account or bank/customer relationship could be substantially affected by the outcome of the proceeding. Canon 3C(l)(d)(ii) requires disqualification where the judge is "known by the judge to have an interest that could be substantially affected by the outcome of the proceeding." Such disqualification may be remitted by following the procedure in Canon 3D. **95-555**

The Commission also has previously decided that a judge is not disqualified in a proceeding in which a bank is a party due to his rental of a safety deposit box at the bank unless such interest could be substantially affected by the outcome of the proceeding. Canon 3C(1)(d)(ii). Again, any such disqualification may be remitted under Canon 3D. **95-556**

The Commission assumes that the fourth listed circumstance involves a situation in which the judge's spouse is a customer of First Alabama Investments. If the judge should have a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning a proceeding, as a result of such relationship of his spouse, then he would be disqualified under Canon 3C(l)(a), and such disqualification would not be subject to remittal. **95-557**

The judge is disqualified under Canon 3C(l)(c) if has any interest that could be substantially affected by the outcome of the proceeding or if he knows that he individually or as a fiduciary, or his spouse or minor child residing in his household, has a "financial interest" in the subject in controversy or in a party to the proceeding as a result of such relationship of his spouse. The term "financial interest" is defined in Canon 3C(3)(c). Any disqualification under Canon 3C(l)(c) may be remitted under the procedure in Canon 3D.

Your fifth and sixth questions involve indebtedness to the bank. In Advisory Opinions 86-276 and 76-5, the Commission advised that the mere existence of a 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 of or against the bank, disqualification would exist. Disqualification based on personal bias cannot be remitted." Advisory Opinion 89-369. See also, Advisory Opinion 76-5. Also, if the debt could be substantially affected by the outcome of the proceeding, disqualification would occur under Canon 3C(l)(d)(ii). A disqualification under Canon 3C(l)(d)(ii) may be remitted under Canon 3D.

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Under the general terms of Canon 3C(l), a judge must disqualify himself whenever his impartiality might reasonably be questioned. While disqualification is not technically required in situations involving the mere existence of a bank/customer relationship or a debtor/creditor relationship, the Commission has previously ruled that the judge should advise the parties of the relationship, and to avoid even the appearance of impropriety, should recuse himself if requested to do so. Canons 2 and 3C(l). Advisory Opinions 76-5, 86-276, and 89-371. This appears particularly appropriate in this case given the number of different debtor, customer, and other relationships involved. A judge also is authorized to recuse himself in such a situation if he deems recusal to be appropriate, even if the parties have no objection. Advisory Opinion 86-260.

The final circumstance presented in your request has also been addressed in prior opinions of the Commission. Canon 3C(l)(d)(i) specifically provides that a judge is disqualified if a person within the fourth degree of relationship to him is an officer, director, or trustee of a party. Thus, a judge whose first cousin is an officer of a bank which is a party to a proceeding is disqualified in that proceeding. This disqualification can be remitted by following the procedure in Canon 3D. See, Advisory Opinions 86-276 and 89-366. Of course, disqualification also would be separately required under Canon 3C(l)(d)(ii) if the judge's first cousin is known to the judge to have an interest that could be substantially affected by the outcome of the proceeding, or under Canon 3C(l)(d)(iii) if the judge's first cousin is to the judge's knowledge likely to be a material witness to the proceeding. Such disqualifications are also subject to remittal under Canon 3D. If the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary fact concerning the proceeding, as a result of his first cousin's position, then he would be disqualified under Canon 3C(l)(a), and such disqualification could not be remitted. **95-560**

In summary, only a disqualification due to the judge's personal bias or prejudice concerning a party, or due to the judge's personal knowledge of disputed evidentiary facts concerning the proceeding, as a result of one or more of the various circumstances you listed would not be subject to remittal under Canon 3D. Therefore, no further response to your additional inquiry of March 21, 1995, appears necessary.