

## Judicial Inquiry Commission

800 SOUTH MCDONOUGH STREET  
SUITE 201  
MONTGOMERY, ALABAMA 36104

January 26, 1996

The Judicial inquiry Commission has considered your request for an advisory opinion whether a judge who is the appointing authority for the Accounts Clerk Department of a circuit court may select as the depositor's bank for the Accounts Clerk Department a bank at which he has a personal account or a bank which a trust of which he is trustee owns several hundred shares of the bank's stock.

Canon 2 generally requires a judge to avoid both impropriety and the appearance of impropriety in all his actions. Canon 5D states that a judge should not serve as a trustee or other fiduciary if such service will interfere with the proper performance of his judicial duties, and also that a judge is subject to the same restrictions on financial activities while acting as a trustee that apply to him in his personal capacity. In the latter regard, Canon 5C(l) provides that a judge should refrain from financial dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, or exploit his judicial position.

The Commission has previously decided that a judge's mere customer relationship with a bank does not create an appearance of impropriety when the bank is a party in litigation before the judge. It is likewise the Commission's opinion that such a mere customer relationship with one or more banks would not create an appearance of impropriety for a judge who makes the selection of the depositor's bank for his court's Accounts Clerk Department, even if the judge chooses a bank at which he has an account. Such an appearance of impropriety would arise only if there was a possibility of personal benefit to the judge as a result of his choice of the depository bank.

An appearance of impropriety would arise if a judge was the trustee of a trust which owned shares of stock in the selected bank. On the other hand, a judge charged with the duty of selecting the depositor's bank has a duty to select the most appropriate financial institution for the deposits. Thus, acting both as trustee for such a trust and as the selecting authority for the Accounts' Clerk Department subjects a judge to potentially conflicting obligations. Accordingly, it is the opinion of the Commission that a judge should not serve as both the appointing authority for the selection of a depositor's bank for an Accounts Clerk Department of his court and as a trustee of a trust which owns shares of stock in a financial institution which is eligible to be selected.

Canon 3 provides that the judicial activities of a judge take precedence over his other activities. Such judicial duties include all the duties of his office prescribed by law, including administrative responsibilities. Since the presiding judge of the circuit court designates the judge to be the appointing authority for the Accounts Clerk Department, the judge may relinquish the responsibility for selecting the depositor's bank for the Accounts Clerk Department rather than relinquishing his position as trustee.