

JUDICIAL INQUIRY COMMISSION

DATE ISSUED: DECEMBER 4, 2002

ADVISORY OPINION 02-807

DISQUALIFICATION DUE TO MEMBERSHIP ON THE BOARD OF DIRECTORS OF A BANK

ISSUES

I. Is a judge who serves on the board of directors of a local bank disqualified to hear cases in which a party is represented by an attorney currently representing a plaintiff in a lawsuit against the bank? **Answer:** This situation should be disclosed to the parties; if recusal is requested, the judge should examine the particular facts presented in order to determine whether his impartiality is reasonably questionable.

II. Would the judge be disqualified if he were named as a defendant in the suit against the bank? **Answer:** Yes.

FACTS

A judge serves on the board of directors of a local bank. Attorney A represents the plaintiff in a pending lawsuit filed against the bank. The judge is not named as a defendant in the suit. Attorney A also represents parties in unrelated cases that ordinarily would be heard by the judge.

DISCUSSION

Canon 3C(1) provides generally that a judge should disqualify himself in any proceeding in which his “impartiality might reasonably be questioned.” The test under Canon 3C(1) is, “Would a person of ordinary prudence in the judge’s position knowing all of the facts known to the judge find that there is a

reasonable basis for questioning the judge’s impartiality?” *In re Sheffield*, 465 So.2d 350, 356 (Ala. 1984). The question under Canon 3C(1) is not whether the judge is impartial in fact, but rather whether another person, knowing all of the circumstances, might reasonably question the judge’s impartiality. *Ex parte Duncan*, 638 So.2d 1332, 1334 (Ala. 1994).

The Commission has long held that Canon 3C(1) requires disqualification of a judge to hear cases in which a party is represented by an attorney who is currently also representing a party opponent to the judge or the judge’s spouse in unrelated litigation. *E.g.*, Advisory Opinions 88-337, 89-373, 95-588, 98-704, and 00-759. If the judge, in his capacity as board member, were to be named a defendant in a lawsuit against the bank, he would be disqualified during the pendency of that suit from sitting in other cases in which the plaintiff’s attorney represents a party.

Where a suit is filed against the bank in which the judge is not named as a party, the relationship between the judge and the attorney for the plaintiff is once removed. Here is a fiduciary relationship between the bank and the judge as a member of the bank’s board, but the Commission does not believe that such a relationship necessarily creates a reasonable question as to the judge’s impartiality in unrelated cases in which the attorney for a plaintiff suing the bank appears. Rather, whether a reasonable question as to the judge’s impartiality exists will depend on the particular circumstances in the case, including the nature of the suit

against the bank and the degree of the judge's involvement in the bank's business.

If the judge does not deem himself to be disqualified on account of attorney A's concurrent representation of a party who is suing the bank, the Commission is of the opinion that the judge should disclose the relationship to the parties in the case. If either party asks the judge to recuse himself, the judge should examine all of the facts and arguments presented in order to decide whether a reasonable question as to his impartiality exists. By disclosing the existence of the relationship, the judge gives the parties and their attorneys the opportunity to supply additional relevant information.

REFERENCES

Advisory Opinions 88-337, 89-373, 95-588, 98-704, and 00-759.

Alabama Canons of Judicial Ethics, Canon 3C(1).

Ex parte Duncan, 638 So.2d 1332 (Ala. 1994).

In re Sheffield, 465 So.2d 350 (Ala. 1984).

This opinion is advisory only and is based on the specific facts and questions submitted by the judge who requested the opinion pursuant to Rule 17 of the Rules of Procedure of the Judicial Inquiry Commission. For further information, you may contact the Judicial Inquiry Commission, P. O. Box 303400, Montgomery, Alabama 36130-3400; tel.: (334) 242-4089; fax: (334) 353-4043; E-mail: jic@alalinc.net.