

Judicial Inquiry Commission

800 SOUTH MCDONOUGH STREET
SUITE 201
MONTGOMERY, ALABAMA 36104

August 24, 1984

The Judicial Inquiry Commission has considered your request for an opinion concerning whether a judge is disqualified from sitting in a certain proceeding. The circumstances are set out as follows:

A divorce case was recently tried and submitted on the disputed issue of which party should be required to pay a mortgage indebtedness incurred during the marriage.

The wife contends, in part, that the debts for which the mortgage was incurred were the debts of the husband and that therefore the mortgage should be paid by him.

The husband contends that the debts incurred were for the general welfare and benefit of the marriage and that therefore the mortgage should be repaid by both parties.

The wife has offered evidence of the disbursements made from the loan secured by the mortgage. These include a payment of \$1,750 to the judge's old law firm in satisfaction of a judgment obtained against the husband.

The judgment was obtained and paid prior to the judge's assuming the bench. The judge now states that he did not work on the lawsuit in which the judgment was obtained nor does he now have any independent recollection of the facts and circumstances surrounding the lawsuit in which the judgment was obtained.

The parties and their attorneys have stipulated that the judge may disregard the testimony and documentary evidence concerning the disbursement of the loan proceeds to pay the judgment. The testimony and evidence has been withdrawn by mutual consent.

The question presented is whether under the above facts and circumstances the judge is disqualified from sitting in the proceeding described.

Disqualification is governed by Canon 3C of the Alabama Canons of Judicial Ethics. In pertinent part that canon provides that a judge is disqualified from sitting in any proceeding in which his impartiality might reasonably be questioned. The canon lists specific instances in which a judge's impartiality might reasonably be questioned. These include personal bias or prejudice concerning a party or personal knowledge of

84-223
Page2

disputed evidentiary facts; the judge or a lawyer with whom he was associated served as a lawyer in the matter or has been a material witness in the matter; and the judge has an interest which could be substantially affected by the outcome of this proceeding. None of these specific factors are present under the circumstances submitted. Further, it is the opinion of the Commission that under the totality of the facts presented disqualification would not occur since a reasonable man, aware of all of the circumstances, should not question the judge's impartiality.

Very truly yours,

JUDICIAL INQUIRY COMMISSION