

## Judicial Inquiry Commission

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April 2, 1986

The Judicial Inquiry Commission has considered your request for an opinion concerning whether under the Alabama Canons of Judicial Ethics a judge is disqualified from sitting in a proceeding involving a bank in which either the judge or members of the judge's immediate family maintain a checking and/or savings account.

Judicial disqualification is governed primarily by Canon 3C of the Alabama Canons of Judicial Ethics. Particularly applicable here are the provisions of Canon 3C(l)(c). These provisions are:

- “(1) A judge should disqualify himself in a proceeding in which his disqualification is required by law or his impartiality might reasonably be questioned, including but not limited to instances where:

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- (c) He knows that he ... or his spouse or minor child residing in his household has a financial interest in the subject matter in controversy or in a party to the proceeding or any other interest that could be substantially affected by the outcome of the proceeding.”

Canon 3C(l) does not specifically discuss the effect that a savings or checking account would have on disqualification. However, Canon 3C(3) gives some guidance as to the meaning of “financial interest” as used in 3C(l). For instance, Canon 3C(3) specifically excludes some interests from the definition of “financial interest” unless the outcome of the proceeding could substantially affect the value of the interest. Specifically excluded within this exception are ownership in a mutual or common investment fund, and the proprietary interest of a policy holder in a mutual insurance company or a depositor in a mutual savings association. Given these exclusions it is the opinion of the Commission that the mere fact that the judge or a member of his immediate family owns a savings or checking account in a particular bank does not disqualify the judge from sitting in a proceeding involving the bank unless his interest could be substantially affected by the outcome of the proceeding.

While the judge is not disqualified under the circumstances discussed, the Commission recognizes that under certain circumstances a judge may feel that recusal may be appropriate. We have in the past recognized a distinction between disqualification and recusal. A judge may recuse himself should he deem recusal to be appropriate even though disqualification may not be required. See Advisory Opinions 83-193 and 84-226.