

Judicial Inquiry Commission

800 SOUTH MCDONOUGH STREET
SUITE 201
MONTGOMERY, ALABAMA 36104

March 2, 1987

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 certain proceeding. Under the facts presented, the judge's brother is a member of the advisory board of a local branch of a state bank whose corporate headquarters are in another city. The members of the local advisory board are called directors. The bank is a party to a proceeding pending before the judge. A motion to recuse has been filed, the judge denied the motion and a petition for mandamus is presently pending before the Supreme Court of Alabama on the issue. The judge has taken no action in the case since the petition was filed.

Because the matter is presently pending before the Alabama Supreme Court, it would be presumptuous for the Commission to issue a non-binding advisory opinion at this time. For your benefit, we would point out that the Supreme Court of Alabama has previously ruled that a judge's failure to disqualify himself does not rise to disciplinary proportions unless made in bad faith. See In re Sheffield, 465 So. 2d, 350 (Ala. 1984). In this instance, even if the Supreme Court grants the petition for mandamus it would not appear from the facts presented that the judge's failure to disqualify would rise to disciplinary proportions.

Sincerely,

JUDICIAL INQUIRY COMMISSION