

Judicial Inquiry Commission

800 SOUTH MCDONOUGH STREET
SUITE 201
MONTGOMERY, ALABAMA 36104

October 28, 1988

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. The facts presented are as follows: The proceeding before the court is part of a divorce action. The defendant is one of five board members of a local Housing Authority. The Housing Authority has entered into a contract to subsidize the rental of certain properties owned by a corporation in which the judge is the sole shareholder. Under the rental contract provided to the Commission, the Housing Authority is subsidizing the full amount of the rental for a period of one year.

It is the opinion of the Commission that the judge is disqualified from sitting in the proceeding in question. This opinion is based on Canons 1 and 3C of the Alabama Canons of Judicial Ethics. Those Canons provide in pertinent part as follows:

Canon 1

A Judge Should Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

Canon 3C

(1) A judge should disqualify himself in a proceeding in which his disqualification is required by law or his impartiality might reasonably be questioned ...

Taken together, these Canons require that judges take great care to determine whether by sitting in a certain proceeding their impartiality might reasonably be questioned. Our State Supreme Court has determined that disqualification occurs under Canon 3C where facts are shown which make it reasonable for members of the public or a party to question a judge's

impartiality. In re Sheffield, 465 So. 2d 350 (Ala. 1984). The test to be applied is would a person of ordinary prudence knowing all of the facts known to the judge find that there is a reasonable basis for questioning the judge's impartiality. See In re Sheffield, supra.

In the present instance, a financial relationship beneficial to the judge exists between the judge's wholly owned corporation and the defendant, as a Housing Authority Board member. It is reasonable to presume that a member of the public would find that this relationship causes the judge's impartiality to reasonably be questioned as set out above. For this reason, the judge should disqualify himself in the instant matter.

Very truly yours,

JUDICIAL INQUIRY COMMISSION