95-571
[Modified by 09-903]

Judicial Inquiry Commission

800 SOUTH MCDONOUGH STREET
SUITE 201
MONTGOMERY, ALABAMA 36104

August 11, 1995

The Judicial Inquiry Commission had considered your request for an advisory opinion concerning whether a circuit judge may preside over a case in which a bank is a party where the judge has a long standing relationship with that bank involving checking accounts and both secured and unsecured loan business. You requested clarification of JIC Advisory Opinion 76-5 in this regard, and you noted that disqualification of all local judges would be a strong possibility in a rural circuit if such a relationship caused disqualification.

JIC Advisory Opinion 76-5 was the first opinion of the Commission concerning disqualification in a case in which a bank is a party. It dealt with the situation in which a judge is indebted to a bank with which he regularly transacts business in the form of loans evidenced by promissory notes. The Commission decided that this fact alone would not cause disqualification unless the relationship actually created some personal bias in favor of the bank, but that a judge should reveal the relationship to counsel and recuse himself or herself if either counsel interposes an objection, in order to avoid the appearance of impropriety.

In Advisory Opinions 86-249, 86-260, 89-367, and 95-555, the Commission held that a judge's ownership of a bank account creating a bank/customer relationship with the bank did not itself disqualify the judge from sitting in all proceedings involving the bank as a party, but that disqualification would occur if the judge's bank account or bank/customer relationship could be substantially affected by the outcome of the proceeding, but that any such disqualification could be remitted under Canon 3D. In Advisory Opinion 86-276, the Commission reaffirmed that the mere existence of a debtor/creditor relationship with a bank due to secured or unsecured loans does not cause disqualification, but in Advisory Opinions 89-369 and 95-558 the Commission cautioned that disqualification would exist if there were additional circumstances such as the granting of special favors or the creation of a personal bias either in favor of or against the bank, and that any disqualification due to personal bias could not be remitted. The Commission also noted in Advisory Opinion 95-558 that disqualification would occur under Canon 3C(1)(d)(ii) if the debt could be substantially affected by the outcome of the proceeding, but that such disqualification may be remitted under Canon 3D.

> Under the general terms of Canon 3C(I), a judge must disqualify himself whenever his impartiality might reasonably be questioned. While disqualification is not technically required in situations involving the mere existence of a bank/customer relationship or a debtor/creditor relationship,

> the Commission has previously ruled that the judge should advise the parties of the relationship, and to avoid even the appearance of impropriety, should recuse himself if requested to do so. Canons 2 and 3C(l). Advisory Opinions 76-5, 86-287 and 89-371.

Advisory Opinion 95-558.

While a judge may have a long-standing relationship with a bank involving accounts and secured and unsecured loans, these facts alone do not cause disqualification unless the relationship creates some personal bias for or against the bank or if the relationship could be substantially affected by the outcome of the proceeding; however, even in the absence of a disqualification, the judge should advise the parties of the relationship and, to avoid even the appearance of impropriety, recuse himself if requested to do so. The Rule of Necessity does not require an alteration of the Commission's conclusions in this regard despite the fact that all of the judges in a rural circuit might have to recuse themselves where the bank is a party since the law provides for the assignment of a circuit judge from another circuit or a supernumerary judge in such a situation.