

ADVISORY OPINION

Code of Judicial Conduct Canon 3

#3-93

The Indiana Commission on Judicial Qualifications issues the following advisory opinion concerning the Code of Judicial Conduct. The views of the Commission are not necessarily those of a majority of the Indiana Supreme Court, the ultimate arbiter of judicial disciplinary issues. Compliance with an opinion of the Commission will be considered by it to be a good faith effort to comply with the Code of Judicial Conduct. The Commission may withdraw any opinion.

ISSUE

The issue is whether a judge must disqualify in cases involving a financial institution through which the judge has an ordinary commercial loan or mortgage.

ANALYSIS

Canon 3 of the Code of Judicial Conduct requires a judge to disqualify in several specific instances and whenever the judge's impartiality might reasonably be questioned. The test for this basis for disqualification has been described as "whether an objective, disinterested observer fully informed of the relevant facts would entertain a significant doubt that the judge in question was impartial". Shaman, Lubet & Alfini, Judicial Conduct and Ethics, 1990, p.143.

The issue here involves the necessity for disqualification in circumstances where a bank has filed collections cases and the judge has a mortgage or commercial loan from the bank. The Commission members believe disqualification is not required in this case, assuming the judge's loan is ordinary in every respect and the merits of the particular case do not implicate the judge's business with the bank in any significant way.

The fairness of the outcome of a typical collections case is not reasonably suspect simply where the judge has an ordinary loan from the bank bringing the action. As with the disqualification rule involving economic interests, a de minimis interest does not force disqualification. See, Canon 3E(1)(c) and Terminology Section, 1993 Code of Judicial Conduct. Given the frequency with which these cases are filed, the relative simplicity of the issues, the insignificant impact of a given case on the bank's operations or on the judge's loan arrangements, impartiality cannot fairly be questioned based upon the fact of the judge's loan.

Added elements could, however, invoke the judge's duty to consider disqualification. If the judge were presently appealing to the bank for a loan or an extension, for example, questions about impartiality might arise. Certainly, if the case involved a judicial determination of an issue which would have a significant impact on the judge's finances, the judge's impartiality could reasonably be questioned and, additionally, disqualification would be specifically required pursuant to Canon 3E(1)(c), on the basis of economic interest.

As is stated in the Commentary to Canon 3, a judge should disclose on the record information which the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no basis for disqualification. The Commission believes that in a typical collections case involving a bank where the judge has an ordinary loan arrangement, even this is not necessary if the judge has disclosed the loan on an annual Statement of Economic Interests.

CONCLUSION

A judge is not disqualified in typical collections cases brought by a bank where the judge has an ordinary commercial loan or mortgage.