



RECEIVED

OCT 6 1981

ADMINISTRATIVE OFFICE  
OF THE COURTS

COMMONWEALTH OF KENTUCKY  
**ETHICS COMMITTEE OF THE KENTUCKY JUDICIARY**  
403 WAPPING STREET  
FRANKFORT, KENTUCKY 40601

**ANTHONY M. WILHOIT**  
Court of Appeals

**JOSEPH H. ECKERT**  
Circuit Court

**B.M. WESTBERRY, CHAIRMAN**  
Attorney

**THOMAS J. KNOPF**  
District Court

**UHEL O. BARRICKMAN**  
Attorney

**JUDICIAL ETHICS OPINION JE-29**

**INFORMAL**

**QUESTION:** Must a judge disqualify himself when a party in a suit before him has purchased real estate from the judge and owes a substantial sum on the purchase?

**ANSWER:** No, unless the interest of the judge will be directly affected by the decision in the case.

**REFERENCE:** SCR 4.30, Canon 3C(1)(d).

**OPINION:**

Canon 3C(1)(d) provides in pertinent part that a judge should disqualify himself when he has "an interest that could be substantially affected by the outcome of the proceeding." The question then becomes whether his interest as creditor of a party could be "substantially affected" by the decision in the case.

This Committee has already held, in its Judicial Ethics Opinion JE-7, that a judge may rent real estate to attorneys who appear before him. We stated in that Opinion:

The judge's interest as a landlord cannot be said to be "substantially affected" by the outcome of a particular proceeding. Therefore there would seem to be no need for disqualification of the judge solely because of the existence of the landlord-tenant relationship between the judge and attorney. Should the lawyer fall behind in his rent, or should disagreements arise between them, the judge should then, of course, disqualify himself.

We think that the same reasoning applies to the judge as creditor of a party before him. Under ordinary circumstances, his interest will not be affected by the outcome of the litigation. But if, for instance, an adverse decision would affect the debtor-party's ability to pay his debt to the judge, the judge should disqualify himself. In that event, the parties and their attorneys may, if they desire, waive the disqualification under the provisions of Canon 3D.

Case law is in accord with our position. *Dial v. Martin*, 37 S.W.2d 166 (Tex. Civ. App. 1931) involved a judge who had a claim against a decedent whose estate was involved in litigation before him. In holding that he was not disqualified the court said at 177.

Merely because the trial judge is a creditor of one of the parties to the suit does not disqualify him, as judge, unless he is directly interested in the result of the litigation. He must have a direct interest in the cause of action or matter being litigated, so that the result of the suit will necessarily affect him to his personal or pecuniary loss or gain.

(Reversed on other grounds, 57 S.W.2d 75). Also see *In re Farber*, 260 Mich. 652, 245 N.W. 793 (1932); Frank, "Disqualification of Judges: In Support of the Bayh Bill," 35 *Law & Contem. Prob.* 43 at 54 (1970).



---

B. M. Westberry, Chairman  
Ethics Committee of the Kentucky Judiciary