



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-56

Formal

- Question:**
- (1) May an attorney who is a stockholder in a bank fulfill his duties as a master commissioner with reference to said bank's foreclosure suits?
 - (2) May the attorney, as master commissioner, use as appraisers in mortgage foreclosure suits, individuals who are officers or employees of a competitor bank?
- Answer:**
- (1) As a stockholder in the bank, the master commissioner is disqualified from handling foreclosure suits involving that bank.
 - (2) A master commissioner handling a foreclosure action for one bank may ethically appoint as appraisers persons who are officers or directors of a competitive bank.
- References:** Canon 3(C)(1)(c) and Canon 3(C)(3)(c); United States v. Sellers, 566 F.2d 884 (4th Cir. 1977); Catherines v. Copytele, Inc., 608 F. Supp 1031 (1985).

The answer to question number one is fairly clear just from reading the Code. Canon 3(C)(1)(c) states that a judge should disqualify himself where he has a financial interest in a party to a proceeding. Canon 3(C)(3)(c) defines "financial interest" to mean "ownership of a legal or equitable interest, however small,"

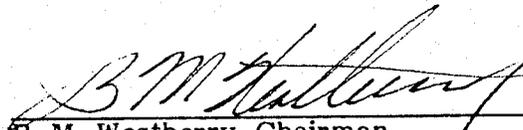
Additionally, there are two federal cases on point. The first case, United States v. Sellers, 566 F.2d 884 (4th Cir. 1977), held that a judge who was a minor stockholder in a bank was not disqualified from handling a criminal case where his bank was robbed. The judge's interest was less than one percent of the bank's stock, yet, in the facts of the case, the judge stated that he always disqualified himself from civil cases involving the bank. In a criminal case, however, he did not feel he should be disqualified since the bank was not a party.

A second, more recent case, also from the federal courts, held that a judge must disqualify himself from a civil case in which he was a stockholder in a wholly owned subsidiary of one of the parties. Catherines v. Copytele, Inc., 608 F. Supp. 1031 (1985). In that case, the judge recused himself immediately upon learning of his financial interest in one of the defendants.

For these reasons, the Committee concluded that a master commissioner should disqualify himself in cases involving foreclosure suits where a bank in which he was a stockholder was a party unless after a disclosure of his financial interest, the parties waived his disqualification.

The Committee was confused by question number two but concluded that the attorney was asking whether he could appoint appraisers from a competitor bank where he was a stockholder in the bank which was a party to the foreclosure action. In such a situation, our answer to question number one applies. The master commissioner should disqualify himself in all proceedings in which a bank in which he is a stockholder is a party. As a general rule, however, the Committee could see no ethical problem in a master commissioner appointing as appraisers persons who were officers or directors of a bank which was a competitor of the party bank.

Sincerely,



B. M. Westberry, Chairman
Judicial Ethics Committee