



Judicial Discipline & Disability Commission

PRESS RELEASE

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FOR IMMEDIATE RELEASE

FEBRUARY 7, 2024

The Arkansas Judicial Ethics Advisory Committee issued an Advisory Opinion to Judge Baxter Sharp, III of Brinkley, Arkansas.

The opinion is attached.



Judicial Ethics Advisory Committee

February 7, 2024

Honorable J. Baxter Sharp III
District Judge, Monroe County District Court
Clarendon & Holly Grove Divisions
P.O. Box 552
Brinkley, AR 72021

Re: Judicial Ethics Advisory Committee Advisory Opinion No. 2023-02

Dear Judge Sharp:

In response to your request dated September 11, 2023 for a Judicial Ethics Advisory Opinion, I write on behalf of the Judicial Ethics Advisory Committee.

The question presented appears to be whether a sitting state district court judge can serve on a local bank board and hold stock in the bank or a bank holding company? Specifically, in your situation, can you continue to act as the Chairman of the Board and hold the largest block of stock of a local bank and its holding company (collectively, "Bank"), or whether your Board position and equity interest in Bank should be divested in the event you become a candidate for and are elected to one of the newly created state district court judgeships for the Sixteenth Judicial District which encompasses Monroe and Arkansas Counties?

First, Ark. Code Ann. §16-17-1115 (a)(2) created new state district court judgeships to become effective January 1, 2025. Ark. Code. Ann. §16-17-1115 (c)(1) was amended to increase the Sixteenth Judicial District state district court judgeships from one to two positions. These are full-time judicial positions with the newly created position being filled by election in 2024.

Second, the Committee appreciates the research performed prior to submitting this request. The Committee is not aware that this specific question has been asked and an advisory opinion provided. Based on a review of the Preamble to the Arkansas Code of Judicial Conduct, applicable Rules and Canons (collectively, the "Code"), other state's authorities and judicial opinions, assuming you are elected to one of the two referenced state district court judgeships, clearly you should not preside over any litigation in which the Bank is a litigant so long as you continues to serve as Bank Board Chair or remain a stockholder in the Bank. *See, i.e.* Ark. Code Jud.

February 7, 2024

Page 2

Conduct, Canon 1, avoiding impropriety and appearance of impropriety and Rule 1.2, promoting public confidence in the independence, integrity and impartiality of the judicial system. However, the question presented is not whether you can preside over cases in which the Bank is a party, but rather whether you can remain on the Board and continue as a stockholder as a sitting full-time state district court judge. Although the Code does not outright prohibit a full-time district court judge from retaining a Board position (as there are exceptions) or being a stockholder in a community business, it does delineate parameters for extrajudicial activities of a judge, providing:

A judge shall conduct the judge's personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office.

Ark. Code Jud. Conduct, Canon 3.

In furtherance of Canon 3, the Code requires that a judge's duties take precedence over personal or extrajudicial activities. Ark. Code Jud. Conduct, Rule 2.1. Additionally, a judge *shall not* "participate in activities that lead to frequent disqualification of the judge." Ark. Code Jud. Conduct, Rule 3.1 (B).

Applying the cited authorities to the facts and issue presented, there is no clear answer to the inquiry under these cited rules. The facts furnished do not disclose historical information of the number of cases over which the state district court in Monroe and Arkansas Counties has exercised jurisdiction. Even with those figures, it is impossible to determine with specificity how many cases involving the Bank will come before the state district court judges in these two counties. This is important because in each and every one of those cases, if you remain on the Board or own stock, you will be required to recuse, leaving all Bank cases to be handled by the only other state district court judge in these two counties. Whether recusal in all Bank cases would be considered "frequent disqualification" not permitted by Rule 3.1 (B) is not clear, because the case volume is unknown. It is also unknown if the administrative plan mutually approved by both judges in accordance with Ark. Code Ann. § 16-17-1115(c)(4) will satisfactorily address the issue of conflicts of interest that could cause "frequent disqualification."

There is also a practical consideration. Because of your family's long-tenured service and ownership in, and operation/oversight of the Bank, even if you divest yourself of the Board and stockholder positions, you may still be required or find it necessary to recuse in Bank cases. So the result would be the same, whether or not you retain Board and stockholder positions.

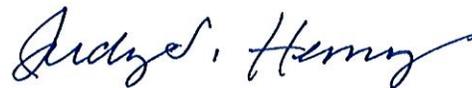
February 7, 2024

Page 3

The Committee also studied Rule 3.11 (B) which provides that “a judge shall not serve as an officer, director ... or employee of any business entity except that a judge may manage or participate in a business closely held by the judge or members of the judge’s family.” This provision permits the “closely held business” exception to the prohibition by allowing a judge to manage or participate in a business the judge or judge’s family closely holds. Guidance on the term “closely held business” is non-existent in Arkansas and scant elsewhere. Because the Bank in this instance has thirty one (31) total owners, including you as the majority stockholder, and because a bank is heavily regulated, and because a bank is more likely to bring or be subject to litigation than many other businesses, which are all factors discussed in other jurisdictions, we do not believe this closely held exception applies here.

In conclusion, if you are elected as a state district judge, you must step aside as Chairman of the Bank before taking judicial office. However, you are not obligated to immediately divest yourself of your stock ownership in the Bank. If your stock ownership leads to frequent disqualification, divestiture may be required in the future.

Respectfully,

A handwritten signature in cursive script that reads "Judy Simmons Henry".

Judy Simmons Henry
Judicial Ethics Advisory Committee

Former C. J. Brill and J. Guthrie join.