

Formal Ethical Opinion No. _____

A request has been made for an advisory ethical opinion based upon the following factual information:

A complaint for absolute divorce was filed by plaintiff husband in the appropriate court after a bed and board divorce was entered in the same court several years earlier. Proof was heard and the attorneys requested closing arguments be presented to the Court subsequent to the Court having the opportunity to review the transcript from the bed and board divorce. That transcript was reviewed and counsels were notified the Court was prepared to receive closing arguments. A significant period of time passed without counsels scheduling closing argument although they were reminded of the Court's preparation to hear closing arguments on several occasions. A complaint was filed with the Court of the Judiciary by the plaintiff husband alleging that the presiding judge in the case took the case under advisement on January 24, 1997, and the judge refuses to render a decision. Since the complaint with the Court of the Judiciary has been filed, complainant/plaintiff husband's attorney has now filed a written closing statement and certain motions are pending before the Court.

The judge now inquires: (1) whether or not the Court should recuse itself from ruling on the pending divorce petition for ethical reasons; (2) whether or not a waiver by the parties can cure any ethical disqualification of the judge; and (3) whether or not the Court can disclose the contents of the complaint filed with the Court of the Judiciary to all parties and counsel upon request so a waiver of the judge's disqualification can be considered.

It is the opinion of this committee that the complaint filed with the Court of the Judiciary does not ethically disqualify the judge from ruling on the pending petition for divorce. The filing of a complaint is not in itself a grounds for recusal. The complaint alleges delay by the judge in rendering an opinion in the case. The complaint does not state a reason for disqualification of a

judge under Canon 3E (1) of the Code of Judicial Conduct, such as bias or prejudice on the part of the judge or an interest or relationship that would question the impartiality of the judge. Tenn. R. Sup. Ct., Canon 3E (1). Furthermore, a party should not be allowed to judge shop by creating bias or prejudice or the appearance thereof which did not previously exist. Judicial Conduct and Ethics, Shaman, Lubet, and Alfini, p 104-105, 1995. “A litigant should not be allowed to drive a judge off a case by making charges unrelated to personal bias or prejudice and then saying “ no judge could be impartial toward someone who made those charges.” Jennifer Oakley (Wilson) vs. Larry R. Wilson, 1999 WL 74786 (Tenn. App.)

Since there is no ethical reason for the judge to recuse himself or herself in this case, there is no reason for a waiver of disqualification nor is there any reason to disclose that a complaint has been filed in the Court of the Judiciary or its contents.

Brenda J. Waggoner
Judge