Problem #38 - Bank v. Borrower

This case is assigned to Judge Baxter, who was recently appointed to the bench. After graduation from law school in 1975, he joined the firm of Adams, Baxter and Clark (now known as A & C, and consisting only of Adams and Clark). The firm (and all the attorneys) have handled foreclosure actions for the bank since 1980.

Judge Baxter is married and has one 16 year old son and a 25 year old married daughter. His daughter is married to an attorney in private practice. He has one sister, who has an adult son and an adult daughter. His sister and his nephew are attorneys. (And finally, his nephew is married to an attorney). None of them practice in A & C.

The bank, represented by A & C, has just commenced a foreclosure action against the borrower. It is assigned to Judge Baxter. In each of the following situations, is Judge Baxter disqualified? Do you need any additional information in order to answer the question?

(A) 1) The judge has personal knowledge as to the circumstances, including the alleged duress, under which the borrower signed the promissory note. See Canon 3(E)(1)(a).

(B) 2) The judge's former law partner (Adams) represents the bank. See Canon 3(E)(1)(b).

(C) 3) The judge's son has a savings account in the bank. See Canon 3(E)(1)(c).

4) The judge's son owns 50 shares of stock in the bank.

(D) 5) The judge's niece is the Vice President for marketing for the bank. See Canon 3(E)(1)(d)(i).

(E) 6) The borrower is represented by the judge's sister. See Canon 3(E)(1)(d)(ii).

7) The borrower is represented by the judge's son-in-law.

8) The borrower is represented by the judge's nephew.

9) The borrower is represented by the wife of the judge's nephew.

(F) 10) The judge's niece is a 20% stockholder in the bank. See Canon 3(E)(1)(d)(iii).

(G) 11) The judge's father will be a material witness at the trial. See Canon 3(E)(1)(d)(iv).

(H) 12) Judy (who was the judge's law clerk last year) represents the borrower. See Canon 3(E)(1). See page 648-649 of Morgan.

13) The borrower is represented by the senior partner of the sister's law firm. See page 647 of Morgan.

14) The borrower is married to the first cousin of the judge. See Morton, page 433 of Brill.

(I) 15) Can any of the preceding conflicts be waived? How? See Canon 3(F).