

## JUDICIAL INQUIRY COMMISSION

DATE ISSUED: MAY 26, 2006

ADVISORY OPINION 06-867

### DISQUALIFICATION WHEN JUDICIAL ASSISTANT IS MARRIED TO AN ATTORNEY

#### ISSUES

Is a judge disqualified from hearing cases in which the judge's judicial assistant's husband's law partner represents a party and, if so, may the disqualification be remitted? **Answer:** The judge is disqualified if he knows that his judicial assistant's husband has an interest that could be substantially affected by the outcome of the case; such a disqualification is subject to remittal. The judge also is disqualified if the presence of additional factors is sufficient to create a reasonable question as to his impartiality; such a disqualification is not subject to remittal.

#### FACTS

A district judge's judicial assistant recently married an attorney in private practice who is in partnership with another attorney.

#### DISCUSSION

Since none of the specific grounds of disqualification stated in the subsections of Canon 3C(1) apply, the issue here is whether the inquiring judge is disqualified under that canon's general provision requiring disqualification when the judge's "impartiality might reasonably be questioned."

"Recusal is required under Canon 3C(1) when facts are shown which make it reasonable for members of the public or a party, or counsel opposed to question the impartiality of the judge.' *Acromag-Viking v. Blalock*, 420, So.2d 60, 61 (Ala. 1982). See, also, *Wallace [v. Wallace]*, 352 So.2d 1376, 1379, (Ala.Civ.App. 1977)]. Specifically, the Canon 3C(1) test is:

'Would a person of ordinary prudence in the judge's position knowing all of the facts known to the judge find that there is a reasonable basis for questioning the judge's impartiality?' Thode, *The Code of Judicial Conduct - The First Five Years in the Courts*, 1977 Utah L.Rev. 395, 402."

*Matter of Sheffield*, 465 So.2d 350, 355-356 (Ala. 1984). The issue under Canon 3C(1) is not whether the judge is impartial in fact, but rather whether another person, knowing all of the circumstances, might reasonably question the judge's impartiality. *Ex parte Duncan*, 638 So.2d 1332, 1334 (Ala. 1994).

The Commission has previously concluded that a judicial assistant stands in the same position as would the judge himself. Advisory Opinions 88-333 and 02-792. There is no simple answer as to whether a judge is disqualified in cases in which an affiliate of a lawyer-relative appears. Advisory Opinion 93-500.

The Commentary to Canon 3C(1)(d)(i) provides that the mere fact that a lawyer in a proceeding is affiliated with a law firm with which a lawyer-relative of the judge is affiliated does not disqualify the judge but that, under appropriate circumstances, the fact that the judge's impartiality might be reasonably questioned (Canon 3C(1)) or that the lawyer-relative is known by the judge to have an interest in the law firm that could be substantially affected by the outcome of the proceeding (Canon 3C(1)(d)(ii)) may cause disqualification.

The Commission has previously concluded that, in cases where an attorney representing a party is affiliated with a law firm with which a close relative of the judge is also affiliated, the judge must consider the facts of which he is aware to determine whether he or she is disqualified. Advisory Opinions 88-338, 90-411, 93-500, 95-565, and 03-811. Further, in

order to avoid an appearance of impropriety, the judge should disclose the relationship to the parties and their attorneys. Such disclosure also provides the parties with an opportunity to supply additional information they believe pertinent. Advisory Opinions 93-500 and 03-811. If the judge finds that additional factors exist which, in conjunction with the relationship, would cause the judge's impartiality to be reasonably questioned, the judge is disqualified under Canon 3C(1); such a disqualification cannot be remitted. If the judge finds that the lawyer-relative has an interest that could be substantially affected by the outcome of the case, the judge is disqualified under Canon 3C(1)(d)(ii); such a disqualification may be remitted. Advisory Opinions 93-500 and 95-565.

Thus, it is the opinion of the Commission that the inquiring judge should disclose the relationship to the parties and their attorneys. He should then examine the facts. The judge is disqualified if he knows that his judicial assistant's husband has an interest that could be substantially affected by the outcome of the case; such a disqualification is subject to remittal. The judge also is disqualified if the presence of additional

factors is sufficient to create a reasonable question as to his impartiality; such a disqualification is not subject to remittal.

#### REFERENCES

Advisory Opinions 88-333, 88-338, 90-411, 93-500, 95-565, 02-792, and 03-811.

Alabama Canons of Judicial Ethics, Canons 3C(1), 3C(1)(d)(i), and 3C(1)(d)(ii).

*Ex parte Duncan*, 638 So.2d 1332 (Ala. 1994)

*Matter of Sheffield*, 465 So.2d 350 (Ala. 1984).

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This opinion is advisory only and is based on the specific facts and questions submitted by the judge who requested the opinion pursuant to Rule 17 of the Rules of Procedure of the Judicial Inquiry Commission. For further information, you may contact the Judicial Inquiry Commission, P. O. Box 303400, Montgomery, Alabama 36130-3400; tel.: (334) 242-4089; fax: (334) 353-4043; E-mail: [jic@alalinc.net](mailto:jic@alalinc.net).