

JUDICIAL INQUIRY COMMISSION

DATE ISSUED: March 9, 2007

ADVISORY OPINION 07-877

DISQUALIFICATION OF JUDGE WHERE A PARTY IS REPRESENTED BY LAWYER-SPOUSE OF JUDGE'S JUDICIAL ASSISTANT

ISSUES

(1) Is a circuit judge disqualified from presiding in a case where a party is represented by the lawyer-spouse of the judge's judicial assistant? **Answer:** Yes. (2) If so, is that disqualification subject to remittal? **Answer:** No.

FACTS

The circuit judge's judicial assistant is married to an attorney who practices domestic, criminal, and civil law in the judge's circuit. The judge is one of three circuit judges in that circuit.

DISCUSSION

(1) None of the specific grounds of disqualification in the subsections of Canon 3C(1) apply to the question of whether a judge is disqualified to hear cases in which a party is represented by the lawyer-spouse of the judge's judicial assistant. Advisory Opinion 02-792. Thus, the issue is whether the judge is disqualified under that canon's general provision, which requires disqualification when the judge's "impartiality might reasonably be questioned," Canon 3C(1). *Id.* The pertinent recusal test is whether a person of ordinary prudence in the judge's position, knowing all the facts known to the judge, would find that there is a reasonable basis for questioning the judge's impartiality. *In re Sheffield*, 465 So.2d 350, 356 (Ala. 1984). It is of no consequence that the judge may in fact be impartial. *Ex parte Duncan*, 638 So.2d 1332, 1334 (Ala. 1994).

In numerous opinions, the Commission has indicated that the representation of a party by a close lawyer-relative of an employee of the judge conclusively presents a reasonable question regarding the judge's impartiality. *See, e.g.*, Advisory Opinions 02-792 (judicial assistant's assistant-district-attorney-spouse); 98-707 (bailiff's lawyer-son-in-law); 94-536 (lawyer-spouse of part-time bailiff); 88-333 (secretary's government-lawyer-spouse); 85-231 (clerk/bailiff's lawyer-brother); 83-190 (clerk/bailiff's lawyer-spouse). These same opinions further hold, however, that this reasonable basis for questioning the judge's impartiality can, in some instances, be avoided if the judge insulates his employee from having any involvement whatsoever with any case in which the employee's lawyer-relative represents a party. *See also* Advisory Opinions 99-742 (a judge may appoint his secretary's nephew to an indigent criminal case if the secretary does not participate in the case) and 97-638 (a judge may preside in a case in which his judicial assistant's spouse is a litigant if his assistant avoids all involvement with the case).

In Advisory Opinion 02-792, however, the Commission found that, in some instances, such insulation is impractical. Finding that a circuit judge is disqualified from hearing any criminal case prosecuted by the assistant district attorney married to his judicial assistance, the Commission explained,

It appears to the Commission that, unlike an occasional civil case, it is not feasible to completely isolate a trial judge's judicial assistant from criminal cases in which the assistant's spouse is the prosecuting attorney. It is hard to imagine a judge handling the

ministerial tasks associated with a criminal docket without his judicial assistant. Even if it is possible to do so, the Commission believes that, due to the nature and volume of cases involved, a perception of partiality would persist. Moreover, isolating the judicial assistant would be disruptive to the orderly administration of cases since a judge's judicial assistant is ordinarily necessarily involved in criminal cases over which the judge presides.

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.

Cf. Advisory Opinion 98-707 (the Canons prohibit a judge from hiring as her bailiff a close relative of a local attorney who handles numerous cases in the judge's court because such employment would cause "more than occasional" disqualification).

In conclusion, the Commission finds that under the facts submitted it appears it would be impractical for a judge to insulate his judicial assistant from the significant number of cases in which the judicial assistant's spouse is counsel and that the judge is disqualified from such cases pursuant to Canon 3C(1).

(2) Such disqualification cannot be remitted.

REFERENCES

Alabama Canons of Judicial Ethics, Canon 3C(1)

Ex parte Duncan, 638 So.2d 1332, 1334 (Ala. 1994)

Matter of Sheffield, 465 So.2d 350, 356 (Ala. 1984)

Alabama Advisory Opinions 02-792, 99-742, 98-707, 97-638, 94-536, 88-333, 85-231, and 83-190
