

## JUDICIAL INQUIRY COMMISSION

DATE ISSUED: March 9, 2007

ADVISORY OPINION 07-879

DISQUALIFICATION ARISING FROM THE JUDGE'S PRIOR SERVICE AS A GOVERNMENT LAWYER ; DISQUALIFICATION WHERE A PARTY IS A GOVERNMENT ENTITY AND THE JUDGE'S LAWYER-SPOUSE REPRESENTS THAT SAME ENTITY IN ANOTHER COURT

### ISSUES

(1) Is a district judge disqualified from presiding in a case where a party is the judge's previous employer, the Department of Human Resources (DHR), but the case involves only matters unrelated to cases handled by the judge when he represented DHR? No. (2) Is a district judge disqualified from presiding in a DHR dependency case in juvenile court if his lawyer-spouse occasionally does conservator and guardianship work for DHR's Adult Protective Services Unit in the probate and circuit courts? No.

### FACTS

Prior to his appointment as a district judge, the judge was one of three lawyers who represented the county Department of Human Resources (DHR). In addition, the judge's lawyer-spouse occasionally does conservator and guardianship work in the probate and circuit courts for DHR's Adult Protective Services Unit.

### DISCUSSION

(1) A judge who previously served as an attorney for DHR is not disqualified in a DHR case unless, as a result of that prior service, he has a personal bias or prejudice concerning a party or has personal knowledge of disputed

evidentiary facts, including "any fact, event, circumstance, situation or question in the case [that] is relevant to a case he prosecuted for DHR before becoming a judge." Advisory Opinion 02-793. In addition, his prior association with other DHR lawyers does not require disqualification unless "his impartiality might reasonably be questioned because of such association." Commentary, Canon 3C(1)(b).

(2) A judge is not disqualified to hear DHR cases merely because the judge's lawyer-spouse represents DHR in another court, provided the judge has no personal bias or prejudice concerning a party or has no personal knowledge of disputed evidentiary facts concerning the case. Canon 3C(1)(a). See, e.g., Advisory Opinion 99-727 (judge disqualified if he has a personal bias or prejudice concerning a party to a case before him as a result of his lawyer-spouse's participation in a similar case pending in another court). Such disqualification is not subject to remittal.

This opinion is rendered on the facts submitted by the judge. The existence of additional circumstances could cause the judge's disqualification. The judge should be vigilant to the existence of any circumstances that could cause his impartiality reasonably to be questioned. Canon 3C(1)(b).

### REFERENCES

Alabama Canons of Judicial Ethics, Canons 3C(1)(a) and 3C(1)(b)

Alabama Advisory Opinions 02-793 and 99-727

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).