

DISQUALIFICATION -- CIRCUIT JUDGE'S SPOUSE IS THE COUNTY MANAGER AND CHIEF EXECUTIVE OFFICER

ISSUES

I. Is a circuit judge whose spouse is county manager of a county within the geographic jurisdiction of the judge's court disqualified from hearing any of the following matters?

- (a) Criminal jury trials in which witnesses may include sheriff's deputies from the county.
- (b) Youthful offender applications and youthful offender trials in which witnesses may include sheriff's deputies from the county.
- (c) Motions to suppress or motions to exclude evidence where witnesses may include sheriff's deputies from the county.
- (d) Applications for search warrants by sheriff's deputies from the county.
- (e) Civil trials in which witnesses may include sheriff's deputies from the county.
- (f) Trials in which the defendant is charged with assault of a sheriff's deputy from the county.
- (g) A case in which the county is a party.

Answer: The judge is disqualified where the county is a party, but not disqualified in the other matters unless a ground of disqualification listed in a subsection of Canon 3C(1) exists, or additional circumstances otherwise create a

reasonable question as to the judge's impartiality.

II. Does the judge have a duty to disclose the employment of the judge's spouse in cases in which sheriff's deputies are potential witnesses?

Answer: The judge should disclose the relationship in all such cases; this may be done in open court, by written notice to the parties, or by filing the information with the clerk of the court.

FACTS

A circuit judge's spouse has been appointed as the county manager by the five county commissioners of a county that includes the geographic jurisdiction of the court on which the judge sits. Under the statute that created the position of county manager, the county manager is the "chief executive officer" of the county, is employed "at-will," and "may be terminated only upon a vote of four-fifths of the county commission." The statute, in specifying the duties of the county manager, provides that the manager does not have appointing authority for or exercise direct oversight of elected officials and their departments or the county attorneys and their staff. It further provides that the manager does not manage the county functions and operations "that are assigned to the county attorneys or committed by general law to elected officers of the county."

DISCUSSION

I.

In regard to situation (g), the judge is disqualified in any case in which the county is a party. Canon 3C(1)(d)(i) expressly

provides that a judge is disqualified in a proceeding in which the judge's spouse is "an officer, director, or trustee of a party." *See, e.g.,* Advisory Opinions 99-724 (judge whose spouse is director of the county Department of Human Resources office is disqualified in cases in which DHR is a party); 97-634 (judge with close relative on a city council is disqualified in cases in which that city is a party); 88-342 (same); 83-186 (judge with close relative who is a county commissioner is disqualified in cases in which county commissioners, the county commission, or the county is a party). This disqualification is remittable pursuant to Canon 3D.

In regard to sheriff applications for search warrants (situation (d)), the Commission advised, in Advisory Opinion 99-741, that a district judge whose spouse is mayor is disqualified where the municipal police ex parte apply for a search warrant because "a criminal defendant in such a situation might reasonably question the impartiality of a judge whose spouse is the mayor, even though the judge is not biased in fact." *Id.* (citing Canon 3C(1)). However, that opinion is not controlling here because the relationship between the county manager and the sheriff's department is fundamentally different than the one between the mayor and the municipal police department.

Pursuant to the statute creating the position of county manager in question, the county commission and thus the county manager do not have any direct control over the sheriff's department because the county sheriff is an executive officer of the State pursuant to Article V, § 112, Constitution of Alabama (1901). *See, e.g., Ex parte Sumter County*, 953 So. 2d 1235, 1238 (Ala. 2006) (a county

commission does not have the authority, or the responsibility, to promulgate policies and work rules for employees of the sheriff's office or have authority over law-enforcement policies or the training, supervision, hiring, or firing of the sheriff's employees). Even the fact that the county commission provides funding for the sheriff's department does not impute control over the department. *See Streater v. Woodward*, 7 F. Supp. 2d 1215 (N.D. Ala. 1998). Because the sheriff's department has virtual autonomy from the judge's spouse's position of county manager, a reasonable question of impartiality does not arise where the sheriff's personnel ex parte apply for a search warrant before that judge.

In addressing the inquiring judge's questions where sheriff's deputies are witnesses in criminal jury trials, youthful offender applications, youthful offender trials, motions to suppress, and motions to exclude evidence (situations (a) – (c)) and where the defendant is charged with assaulting a sheriff's deputy (situations (f)), the Commission reiterates the advice in Advisory Opinion 04-845. There, the Commission addressed the same questions except that, in that opinion, the judge's spouse was the elected mayor of a city within the jurisdiction of the judge's court and the questions were in the context of cases involving municipal police officers. The Commission advised that the mere fact the judge's spouse is mayor does not create a reasonable question as to the judge's impartiality in the situations posed.

Although a mayor is elected and ordinarily is not subject to removal during the current term of office whereas the county manager answers to the five county commissioners and is subject to termination at any time, the

Commission finds that the circumstances here do not necessitate advice different from that given in Advisory Opinion 04-845. Under the enumerated circumstances here ((a) – (c) and (f)), the judge’s spouse would not actively be directing the actions of the sheriff’s department in the proceeding, *see* Advisory Opinion 89-353, or otherwise have some personal or direct involvement or interest in the case, *see* Advisory Opinions 86-286, 88-345, and 97-632. Moreover, it is unlikely that a reasonable person would believe that the judge would have a propensity to rule in favor of the sheriff’s department witnesses merely because the judge’s spouse is the county manager. *Cf. State v. Logan*, 689 P.2d 778 (Kan. 1984) (a judge’s propensity to convict criminal defendants does not increase where the judge’s son worked for the prosecutor’s office, but was not even remotely involved in the prosecution). We find the same rationale applies to situation (e), civil trials in which witnesses may include sheriff’s deputies from the county.

Thus, for all situations posed, except where the county is a party, the inquiring judge should survey the facts of each case to determine the application of the following provisions:

- Canon 3C(1)(a): personal bias or prejudice concerning a party, as a result of the spouse’s position;
- Canon 3C(1)(a): personal knowledge of disputed evidentiary facts, as a result of the spouse’s position;
- Canon 3C(1)(c) and (d)(ii): the spouse to the judge’s knowledge has a financial interest in the subject matter in controversy or in a party to the

proceedings, or any other interest that could be substantially affected by the outcome of the proceedings (e.g., affect the spouse’s salary or employment, *see* Advisory Opinions 97-632 and 86-286, but *see* Advisory Opinion 92-462 (the mere fact the judge’s son is employed by the defendants does not involve an interest that could be substantially affected by the outcome of the case) (citing *Pestar v. Remington Arms Company, Inc.*, 443 N.Y.S.2d 987, 988 (1981)));

- Canon 3C(1)(d)(iii): the spouse to the judge’s knowledge is likely to be a material witness; and
- Canon 3C(1)(a): the judge’s impartiality is otherwise reasonably questionable because the judge’s spouse is the county manager. For example, if the judge’s spouse has a personal interest or direct involvement in a particular case, the judge is disqualified to hear that case. Advisory Opinion 04-845 and opinions cited therein.

In conclusion, it is the opinion of the Commission that the mere fact that the judge’s spouse is the county manager and chief executive officer of the county does not create a reasonable question as to the judge’s impartiality in proceedings of the type described in the statement of the situations presented, except in the case in which the county is a party. However, if any of the provisions of Canon 3C(1) apply or if the judge’s spouse has a personal interest or direct involvement in a particular case, the judge is disqualified to hear the case.

II.

The Canons do not expressly require disclosure of interests or relationships the judge does not deem disqualifying. Canon 3E provides that a judge who does not deem himself or herself disqualified may make information concerning interests or relationships available, either by filing that information in the office of the clerk of the judge's court or by causing notice to be given to the parties to the proceeding. Under Canon 3E, it is the duty of the parties to familiarize themselves with any materials available for inspection in the clerk's office.

As in Advisory Opinion 04-845, it is the opinion of the Commission that the inquiring judge should disclose the spouse's employment. Disclosure would prevent any appearance of impropriety. It also puts the parties on notice so they can bring to the judge's attention any additional circumstances. Relationship information may conveniently be disclosed by filing a statement with the court clerk, or the judge may give notice in open court or cause written notice to be given to the parties.

REFERENCES

Alabama Canons of Judicial Ethics, Canons 3C(1), 3C(1)(a), 3C(1)(c), 3C(1)(d)(i), 3C(1)(d)(ii), 3C(1)(d)(iii), 3D, and 3E.

Advisory Opinions 04-845, 99-741, 99-724, 97-634, 97-632, 92-462, 89-353, 88-345, 88-342, 86-286, and 83-186.

Article V, § 112, Constitution of Alabama (1901).

Ex parte Sumter County, 953 So. 2d 1235, 1238 (Ala. 2006).

King v. Colbert County, 620 So. 2d 623 (Ala. 1993).

Streater v. Woodward, 7 F. Supp. 2d 1215 (N.D. Ala. 1998).

State v. Logan, 689 P.2d 778 (Kan. 1984).

Pestar v. Remington Arms Company, Inc., 443 N.Y.S.2d 987, 988 (1981).

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 18 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.