

# JUDICIAL INQUIRY COMMISSION

DATE ISSUED: October 2, 2013

ADVISORY OPINION 13-924

DISQUALIFICATION: ATTORNEY'S  
PARENT IS JUDGE'S FORMER  
SUPERVISOR

## ISSUE

Is a judge disqualified from presiding in cases in which the parent of an attorney representing a party in a case assigned to the judge was the judge's supervisor during the judge's employment 15 years ago?

## FACTS

Before the judge became an attorney licensed to practice law in Alabama, the judge was employed by a major Alabama corporation. During that employment, specifically from 1994 to 1998, the judge worked in a division of a certain department. The manager of that department during those years is the father of an attorney who frequently practices in the judge's court. He was not the judge's immediate supervisor, and the judge did not, nor at any time since, have any personal-type relationship with him. In addition, the judge and the former manager do not have any ongoing legal, business, or social relationship. In fact, the judge has rarely seen him during the past 15 years.

## DISCUSSION

Foremost, the decision whether to recuse rests with the judge, and the Commission cannot invade that province of the trial court. Advisory Opinion 09-902. Thus, the Commission must restrict its advisory opinion to general advice

regarding the application of the Alabama Canons of Judicial Ethics. In addition, although the canons have the force of law, the opinions of the Judicial Inquiry Commission are rendered in connection with the ethical conduct of the judge and "are not binding and do not affect a party's rights or remedies." Ex parte Balogun, 516 So. 2d 606, 609 (Ala. 1987), abrogated on other ground, Ex parte Crawford, 686 So. 2d 196 (Ala. 1996).

Under the canons, disqualification is required when the judge's "impartiality might reasonably be questioned." Canon 3C(1). The test to determine whether a judge's impartiality might reasonably be questioned 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?" In re Sheffield, 465 So. 2d 350, 356 (Ala. 1984).

A judge is not disqualified on account of his or her former employment by a party unless the judge was employed as legal advisor to that party at a time when the present case arose or was pending. Advisory Opinion 98-700 (a judge is not disqualified on the basis he or she had been employed by some of the parties several years earlier); 89-359 through -365 (the judge's previous employment as the governor's legal advisor does not disqualify the judge in a case in which the governor is a party except in cases pending during the judge's tenure as the governor's legal advisor). See also Clemmons v. State, 469 So. 2d 1324

(Ala. Crim. App. 1985) (“that the trial judge and victim knew each other and possibly enjoyed a friendship both professionally and socially is not reason enough to require the judge to recuse himself”).

It follows that the judge’s prior professional association, 15 years earlier, with the father of an attorney representing a party in a case before the judge does not create a reasonable question as to the judge’s impartiality and is an insufficient basis for disqualification. “[t] is an inescapable fact of life that judges serving throughout the State will necessarily have had associations and friendships with parties [and their attorneys] coming before their courts. A judge should not be subject to disqualification for such ordinary relations with his fellow citizens.” Ex parte Hill, 508 So. 2d 269, 272 (Ala. Civ. App. 1987).

#### REFERENCES

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

Alabama Advisory Opinions 09-902; 98-700; 89-359 through -365; 84-221

Ex parte Balogun, 516 So. 2d 606, 609 (Ala. 1987), abrogated on other ground, Ex parte Crawford, 686 So. 2d 196 (Ala. 1996)

In re Sheffield, 465 So. 2d 350, 356 (Ala. 1984)

Ex parte Hill, 508 So. 2d 269, 272 (Ala. Civ. App. 1987)

Clemmons v. State, 469 So. 2d 1324 (Ala. Crim. App. 1985)

Rule 18, Rules of Procedure of the  
Judicial Inquiry Commission

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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 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.