

JUDICIAL INQUIRY COMMISSION

DATE ISSUED: JUNE 21, 2022

ADVISORY OPINION 22-952

DISQUALIFICATION DUE TO ACQUAINTANCE WITH A PARTY

specifically, the test under Canon 3C(1) is:

ISSUES

Are the judges of the Alabama Court of Civil Appeals required to disqualify themselves from a juvenile case in which the child is currently in the custody of a deputy marshal?

Answer: No.

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?

FACTS

A juvenile case involving the custody of a child is pending on appeal before the Alabama Court of Civil Appeals. The child is currently in the custody of an individual who is employed as a deputy marshal of the Alabama Supreme Court. The deputy marshal is a party to the appeal. The judges have not been predisposed to any facts or other issues that may be presented on appeal and do not have a relationship with the deputy marshal outside of the professional relationship between them. The extent of the professional relationship is that the deputy marshal, as a part of the marshal's department, is responsible for providing security to the Heflin-Torbert Judicial Building and its occupants, which includes the judges of the Alabama Court of Civil Appeals.

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

In Advisory Opinion 98-701, the Commission stated: "The fact that a party is employed in some capacity within the court or law enforcement system . . . is [not] sufficient to cause disqualification." Advisory Opinion 98-701. In Advisory Opinion 94-519, the Commission advised that a circuit judge is not disqualified from a case based on the mere fact that the circuit clerk is a material witness. The Commission stated that, absent other extenuating circumstances, "the professional relationship between a circuit judge and a circuit clerk, in and of itself, is not such as would cause a judge's impartiality to reasonably be questioned under Canon 3C or to create the appearance of impropriety under Canon 2," unless the relationship would cause the judge to be unable to remain fair and impartial. *Id.* Moreover, the Commission repeated the following from the Court of Civil Appeals in Advisory Opinion 03-827: "[I]t is an inescapable fact of life that judges serving throughout the State will necessarily have had associations and friendships with parties coming

DISCUSSION

Under Canon 3C(1) of the Alabama Canons of Judicial Ethics, a judge is disqualified where the judge's "impartiality might reasonably be questioned." More

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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).

Likewise, the relationship between the deputy marshal and the judges of the Court of Civil Appeals, where the deputy marshal, as an employee of the marshal’s department, provides security to the Judicial Building in which the Court of Civil Appeals judges work, is insufficient, in and of itself, to create a reasonable question as to the judge’s impartiality. *See United States v. Faul*, 748 F.2d 1204, 1210–11 (8th Cir. 1984) (holding that a marshal having contact with the court by providing security is not sufficient to establish a professional or personal relationship that would demonstrate a personal prejudice or bias or an inability for the judge to remain impartial); *United States v. Jacobs*, 311 Fed. App’x. 535, 537 (3d Cir. 2008). Therefore, it is the opinion of the Commission that the judges of the Court of Civil Appeals are not disqualified on the basis that a deputy marshal who provides security to the judges is a party in the appeal.

This opinion only addresses the judge’s duty to disqualify under the Alabama Canons of Judicial Ethics. The Commission has previously recognized that the duty to disqualify is separate from a judge’s decision to recuse himself or herself from a proceeding. Advisory Opinion 83-193. Even where a judge is not disqualified, a judge may still recuse

himself or herself from a proceeding if the judge “feels or believes the circumstances warrant such an act on his [or her] part.” *Id.* One such circumstance could be, for example, the impact that the outcome may have on future working relations among court personnel. *See* Advisory Opinions 95-587 and 98-701. However, a judge’s decision whether to recuse is within the judge’s discretion. Advisory Opinion 09-902; *but cf.* Advisory Opinion 85-235.

REFERENCES

Alabama Advisory Opinions 83-193, 85-235, 94-519, 95-587, 98-701, 03-827, and 09-902.

Alabama Canons of Judicial Ethics 3C(1).

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

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

United States v. Faul, 748 F.2d 1204, 1210–11 (8th Cir. 1984).

United States v. Jacobs, 311 Fed. App’x. 535, 537 (3d Cir. 2008).

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

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