

JUDICIAL INQUIRY COMMISSION

DATE ISSUED: APRIL 25, 2024

ADVISORY OPINION 24-962

DISQUALIFICATION: JUDGE'S SPOUSE IS A POLICE LIEUTENANT

ISSUES

Is a judge disqualified from hearing criminal cases involving local police officers who are under the supervision of the judge's spouse?

Answer: Yes, but the disqualification is subject to remittal by the parties.

FACTS

The spouse of a judge is a lieutenant in the local police department. As lieutenant, the judge's spouse exercises supervisory authority over two units that primarily investigate homicides, robberies, and assaults. The judge's spouse will also be responsible for compiling crime statistics regarding robberies and assaults. The judge hears both criminal and civil cases, including cases that are investigated by officers of the local police department.

DISCUSSION

Disqualification is governed by Canon 3C. Canon 3C(1) provides:

A judge should disqualify himself [or herself] in a proceeding in which his [or her] disqualification is required by law or his [or her] impartiality might reasonably be questioned, including but not limited to:

....

(d) [The judge or the judge's] spouse, or a person within the fourth degree of relationship to either of them, or the spouse of such a person:

(i) Is named a party to the proceeding, or an officer, director, or trustee of a party;

(ii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iii) Is to the judge's knowledge likely to be a material witness in the proceeding.

Generally, the Commission has advised that a judge is not disqualified from a case involving a particular law enforcement agency based solely on his or her spouse's employment with that law enforcement agency. Advisory Opinion 86-286; *see also* Advisory Opinion 13-919. Rather, a judge is disqualified from such a case only if

his or her spouse was actually involved in the case in any way. *Id.* This is true, however, only where the judge's spouse does not exercise any supervisory authority within the law enforcement agency. *See* Advisory Opinions 97-668 and 13-919.

Where a judge's spouse exercises supervisory authority within a law enforcement agency, the judge is disqualified from cases in which the judge's spouse was actually involved or officers under the supervision of the judge's spouse were involved. Advisory Opinion 13-919; Cynthia Gray, *An Ethics Guide for Judges and Their Families* 51 (Am. Judicature Soc'y 2001). A judge's spouse has a clear interest—*i.e.*, the satisfactory performance of his or her duties—that could be substantially affected by the outcome of cases brought by officers who are under his or her command, even where the judge's spouse may not have had any direct involvement in the case. *See* Advisory Opinions 81-103 and 88-322 (recognizing that a judge's spouse's employment is a substantial interest that could disqualify the judge if it would be substantially affected by the outcome of a proceeding). Therefore, a judge is disqualified pursuant to Canon 3C(1)(d)(ii) from cases in which the judge's spouse or officers over whom the judge's spouse exercises supervisory authority are actually involved.

Here, the judge's spouse is a lieutenant in the local police department overseeing a unit that

conducts investigations, primarily, of homicides, robberies, and assaults. The policies and procedures of the local police department place each organizational unit under the command of one commanding officer and make that officer "responsible and accountable for the discipline and efficiency of subordinates assigned to their command." Although the judge's spouse may not personally be involved in or review every step of an investigation, the judge's spouse is responsible for the efficient and successful performance of the unit's duties, including the successful prosecution of crimes investigated by officers under the spouse's supervision. Because the judge's spouse, as the lieutenant who supervises a unit, has an interest that could be substantially affected by the outcome of cases brought by officers in that unit, the judge is disqualified from those cases.

Nonetheless, this disqualification may be remitted. Canon 3D provides:

A judge disqualified by the terms of Canon 3C(1)(c) or Canon 3C(1)(d) may, instead of withdrawing from the proceeding, disclose in the record the basis of his [or her] disqualification. If based on such disclosure, the parties and lawyers, independently of the judge's participation, all agree in writing that the judge's relationship is immaterial or that his financial interest is insubstantial, the judge is no

longer disqualified, and may participate in the proceeding. The agreement signed by all parties and lawyers shall be incorporated in the record of the proceeding.

Because the judge is disqualified, in this instance, under the terms of Canon 3C(1)(d)(ii), the parties may remit the judge's disqualification following the judge's disclosure of the relationship on the record by following the procedure outlined in Canon 3D.

The Commission notes that its advice in Advisory Opinion 13-919 suggests that this type of disqualification is not remittable, as the Commission had previously advised in Advisory Opinions 99-730 and 99-735, because it creates a reasonable question as to the judge's impartiality, and, therefore, falls under Canon 3C(1)'s general disqualification provision, which is not subject to remittal. In its review of this advice, it is the opinion of the Commission that this type of disqualification is remittable as it falls under both the terms of Canon 3C(1)(d) and Canon 3C(1)'s general disqualification provision. Canon 3C(1) provides that a judge is disqualified "in a proceeding in which . . . his [or her] impartiality might reasonably be questioned, *including* but not limited to instances where:" (Emphasis added.) The Canon then goes on to list four specific instances where a judge is disqualified. Canons 3C(1)(a)–(d).

The use of the word "including" in Canon 3C(1) indicates that a reasonable question as to the judge's impartiality exists in each of the four specific instances listed in Canons 3C(1)(a)–(d). Even so, Canon 3D provides that disqualifications caused by the specific instances in Canons 3C(1)(c) and (d) are remittable by the parties. Therefore, the Commission advises that disqualification under Canons 3C(1)(c) and 3C(1)(d) is remittable, even though a reasonable question as to the judge's impartiality exists that would disqualify the judge under the general disqualification provision.

REFERENCES

Alabama Canons of Judicial Ethics 3C(1), 3C(1)(d)(ii), 3D.

Alabama JIC Advisory Opinions 81-103, 86-286, 88-322, 97-668, 13-919.

Cynthia Gray, *An Ethics Guide for Judges and Their Families* 51 (Am. Judicature Soc'y 2001).

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 Alabama 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; email: jic@jic.alabama.gov.