

## Judicial Inquiry Commission

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MONTGOMERY, ALABAMA 36104

September 8, 1996

Your request for the Commission's opinion on whether or not you may, after becoming a circuit judge, employ an uncle by marriage as a bailiff has been considered by the Commission and its opinion is that such employment would be contrary to Canon 3B(4) of the Canons of Judicial Ethics and also a violation of Title 55, Section 15(l), Code of Alabama 1940, as amended.

Canon 3B(4), Canons of Judicial Ethics, provides, in pertinent part, as follows:

“(4) A judge should not make unnecessary appointments. He should exercise his power of appointment only on the basis of merit, avoiding nepotism and favoritism. . . .”

Title 55, Section 15(l) provides as follows:

“After this section takes effect no officer or employee of the state or of any state department, board, bureau, committee, commission, institution, corporation, authority or other agency of the state shall appoint any person related to him within the fourth degree of affinity or consanguinity to any job, position or office of profit with the state or with any of its agencies. Any person related to the appointing authority within the prohibited degree shall be ineligible to serve in any capacity with the state under authority of such an appointment and any appointment so attempted shall be void. Whoever violates this section is guilty of a misdemeanor and shall be punished by a fine not to exceed \$500 or by imprisonment not to exceed one year, or both. This section shall not apply, however, in the case of an appointment of a person to a position in the classified service of the state made from the register of persons eligible as certified by the state personnel director.

“The provisions of this section shall not apply to any individual or individuals employed as of the effective date of this section in any branch, department or bureau of the state or the reappointment of any individuals employed on the effective date of this section.”

As a circuit judge, you are a state official, Pruett v. Delony, 289 Ala. 578, 586, 269 So.2d 109 (1972); Stone v. State, 233 Ala. 239, 241, 171 So. 362 (1936); State ex rel. Montgomery v. Merrill, 218 Ala. 149, 151, 117 So. 473 (1928), and an uncle by marriage would be related to you certainly within the fourth degree of affinity.

Furthermore, your bailiff will begin receiving his salary from the state treasury on October 1, 1977, and, at that time, will become a state employee. Consequently, the Commission concluded that the hiring of your uncle as your bailiff would be contrary to the spirit and the letter of Canon 3B(4) and would also very shortly after you assume the office of circuit judge cause you to be in violation of Title 55, Section 15(l) of the Alabama Code.

If we can be of further assistance, please do not hesitate to call upon us.