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[Overruled or Modified by 88-338]
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Judicial Inquiry Commission

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August 25, 1980

The Judicial Inquiry Commission has considered your request for an opinion concerning the disqualification of judges in certain cases where a lawyer-relative represents one of the parties. Your specific questions are as follows:

- (1) May a Judge preside at the trial of criminal cases when the judge's brother or his brother's partner represents the defendant? **80-88**
- (2) May a Judge preside at the trial of criminal cases in which his son acts as Assistant District Attorney? **80-89**
- (3) Does the fact that a judge's son is associated with the office of the District Attorney for his circuit preclude the judge from presiding over the trial of any criminal cases? **80-90**

This Commission has held on several previous occasions that under Canon 3C of the Alabama Canons of Judicial Ethics a judge is disqualified from hearing any case in which he is related in the fourth degree of affinity or consanguinity to an attorney representing a party to the proceeding. We have further held that a judge is also disqualified if such a relative's law firm represents a party to the proceeding even though the lawyer-relative does not participate in the proceeding.

In keeping with these prior opinions, it is the opinion of the Commission that a judge may not preside at the trial of criminal cases when the judge's brother or the judge's brother's partner represents the defendant. It is further our opinion that a judge may not preside at the trial of a criminal case in which the judge's son acts as Assistant District Attorney. However, since an Assistant District Attorney working in the office of the District Attorney may have no conceivable financial interest in the outcome of the trial of a criminal case in which that specific Assistant District Attorney does not participate, the Assistant District Attorney's father is not automatically disqualified from sitting as judge in criminal cases in which the Assistant District Attorney does not participate.

Sincerely,