

### Judicial Inquiry Commission

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May 28, 1984

The Judicial Inquiry Commission has considered your request for an opinion concerning whether a judge may sit in a proceeding in which his spouse was, and the children are, related to the defendant. The judge estimates that his children and the defendant are sixth cousins. The proceeding is a capital case and prior to accidentally learning of the relationship, the judge had presided over the trial and punishment stages of the case. Only the sentencing phase remains.

Disqualification is governed generally by Canon 3C of the Alabama Canons of Judicial Ethics. That Canon specifically provides:

(1) A judge should disqualify himself in a proceeding in which his disqualification is required by law or his impartiality might reasonably be questioned, including but not limited to instances where:

\* \* \* \* \*

(d) He or his 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 ...

Under this Canon, disqualification is automatically required if the defendant or the defendant's spouse was related to the judge's spouse within the fourth degree. If the relationship is more distant than the fourth degree, disqualification does not occur because of the mere fact of the relationship. As the judge points out, neither he nor his wife knew the defendant or the defendant's family, nor did the judge know of the distant relationship until he inadvertently learned of it after the trial of the case.

Therefore, it is the opinion of the Commission, based on the facts presented, that the judge in question is not disqualified from sitting in the sentencing portion of the proceeding. This result is the same whether or not a motion to recuse has been filed.

Yours very truly,

JUDICIAL INQUIRY COMMISSION