

Judicial Inquiry Commission

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March 2, 1986

The Judicial Inquiry Commission has considered your request for an opinion concerning whether, under the Alabama Canons of Judicial Ethics, a Judge may appoint his second cousin, who is highly competent and qualified, as his secretary.

It is the opinion of the Commission that a judge is not prohibited from appointing his second cousin, who is highly competent and qualified, as his secretary. This issue is governed by Canon 3B(4) of the Alabama Canons of Judicial Ethics as well as Section 41-1-5, Code of Alabama, 1975. These provisions are as follows:

Canon 3B(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 ...”

Section 41-1-5:

“No officer ... of the state ... shall appoint any person related to him within the fourth degree of affinity or consanguinity to any job ... with the state or any of its agencies.”

Taken together, these provisions absolutely prohibit the judge's appointment of a relative within the prohibited degree to the position of judicial secretary. Other appointments of relatives are restricted, but not absolutely prohibited by Canon 3B(4). If the relative does not fall within the prohibited degree and the appointment is based on merit and not nepotism, then the Canon does not prohibit the relative's appointment. According to the Nolan Chart, a second cousin falls within the sixth degree of kinship; therefore, an appointment based on merit is not prohibited.

Sincerely,

JUDICIAL INQUIRY COMMISSION