

## Judicial Inquiry Commission

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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 once removed as his bailiff. The judge states that he has interviewed a number of people and his relative is the most qualified applicant.

In Advisory Opinion 86-256 the Commission considered a similar question, i.e., whether a judge could appoint his second cousin as his secretary. The Commission found that judicial appointments are governed by Canon 3B(4) of the Alabama Canons of Judicial Ethics and 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.”

The Commission held that these two provisions, taken together, absolutely prohibit a judge's appointment of a relative within the prohibited degree. Other appointments of relatives are restricted but not absolutely prohibited. If the appointment is based on merit and not nepotism then the appointment is not prohibited if it is outside the fourth degree. We hereby reaffirm our Advisory Opinion 86-256.

According to the Nolan Chart, a second cousin once removed falls within the seventh degree of kinship. Therefore, based on the foregoing it is the opinion of the Commission that an appointment of this relative, if based solely on merit, is not prohibited.

Sincerely,

JUDICIAL INQUIRY COMMISSION