

87-316  
87-317  
87-318  
87-319

## Judicial Inquiry Commission

800 SOUTH MCDONOUGH STREET  
SUITE 201  
MONTGOMERY, ALABAMA 36104

September 29, 1987

The Judicial Inquiry Commission has considered your request for an opinion concerning whether under the Alabama Canons of Judicial Ethics a judge is disqualified from performing certain judicial functions in indigent criminal cases. The judge is assigned the duty of appointing attorneys for indigent defendants in criminal cases. The judge also takes guilty pleas and presides over arraignments. The judge's brother sometimes represents criminal defendants who employ him but is not on the list of lawyers who accept indigent appointments. The husband of the judge's niece has now begun to practice law in this circuit and has expressed a desire to accept appointments. Under these facts, the following questions are posed:

1. May the judge appoint his niece's husband to represent indigent defendants in criminal cases?
2. Is the judge disqualified from sitting in arraignments where either his brother or his niece's husband represents a criminal defendant, who is pleading not guilty?
3. Is the judge disqualified from sitting in a proceeding in which the defendant represented by either of his relatives enters a plea of guilty and no action is taken on that plea?
4. Is the judge disqualified from sitting in all cases in which his niece's husband is involved?

It is the opinion of the Commission that under the Alabama Canons of Judicial Ethics the judge is disqualified from sitting in all of the described proceedings. In Canon 3C(l)(d) of the Alabama Canons of Judicial Ethics, the disqualifying kinship is described as:

"He or his spouse or a person within the fourth degree of relationship to either of them, or the spouse of such a person."

In this instance, the judge stands within the fourth degree of kinship to both his brother and his niece. Therefore, he stands within the fourth degree to the spouse of either of them. On numerous past occasions the Commission has applied the disqualification of Canon 3C to any matter in which the relative represents a party. See Advisory Opinions 79-64, 80-68, 80-91, 80-88, 80-96, 82-169, etc. And, in Advisory Opinions 80-41 and 82-138 we advised that this disqualification extended to the appointment of attorneys for indigent defendants. We now affirm that the disqualification of Canon 3C as applied by this Commission extends to any act which may be performed by a judge in a judicial proceeding except the act of entering an order of disqualification.

Sincerely,

JUDICIAL INQUIRY COMMISSION

I