

Judicial Inquiry Commission

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August 2, 1988

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 sitting in a certain proceeding. The proceeding is a civil case which has been tried to a jury verdict and a judgment entered for the plaintiff. The judge is now informed that the defendant has hired a new lawyer to represent him in post-judgment proceedings, including, presumably, motion for new trial and remittitur. The newly-hired attorney is currently representing the judge's wife in the pending administration of her father's estate. The judge's wife is executrix of the estate and there are no contested claims. The questions presented are whether the judge is disqualified from hearing the post-trial motions and, if not, whether he must recuse himself if all parties, knowing these facts do not agree to remit the "possible" ground for disqualification.

It is the opinion of the Commission that under Canon 3C of the Alabama Canons of Judicial Ethics, a judge is disqualified from sitting to determine post-trial motions where after the case has been tried to a jury verdict and judgment rendered for the plaintiff, the defendant hires a certain attorney to represent him in post-trial proceedings. The attorney is presently representing the judge's wife as executrix in the uncontested probate of her father's estate.

Under Canon 3C(l) disqualification is required where:

"... his disqualification is required by law or his impartiality might reasonably be questioned..."

In two previous advisory opinions, the Commission has advised that a judge is disqualified from sitting in any proceeding in which an attorney for one of the parties represents the judge in an unrelated matter. See advisory opinions 80-74 and 87-313. In advisory opinion 87-313 the attorney represented an estate for which the judge served as executor. In determining disqualification due to a relationship with an attorney, the judge and his wife stand as one. Therefore, these past advisory opinions are applicable.

The Commission does note, however, that there may be other matters for the judge to consider in this situation. Post-trial proceedings constitute a very late date for a litigant to cause a judge's disqualification by hiring a new lawyer. Therefore, for the sake of judicial economy and to the end that justice may be fairly administered, the judge might consider whether, as a matter of law, the attorney should be disqualified from making a late appearance in this proceeding.

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In response to your second question, if a judge is not disqualified by law from sitting in a proceeding, then the matter of recusal is up to the judge. Only the judge can know in such an instance whether he has some personal interest which may require recusal or whether circumstances exist in his own mind which might cause his impartiality reasonably to be questioned.

Very truly yours,

JUDICIAL INQUIRY COMMISSION