

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 is disqualified from sitting in a proceeding in which one of the parties is represented by an attorney, who is related to the judge's wife within the fourth degree by adoption. Assuming that disqualification exists, you ask whether under Rule 13 of the Rules of Judicial Administration you may appoint a District Judge to hear ex parte requests for relief in domestic relations cases, sign decrees on non-contested divorces and otherwise hear non-jury actions.

It is the opinion of the Commission that under the Alabama Canons of Judicial Ethics a judge is disqualified from sitting in any proceeding in which he or his spouse is related within the fourth degree by adoption to an attorney for a party to the proceedings. In this instance, the adoptee is the judge's spouse and the attorneys are the wife's adoptive father and his brother.

This opinion is based on Canon 3C of the Alabama Canons of Judicial Ethics and previous interpretations of that Canon by the Commission. Canon 3C provides in pertinent part:

(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, ...

(ii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

We note that the Commentary to this Canon provides that the mere fact that a lawyer relative is affiliated with a firm with which a lawyer in the proceeding is affiliated does not itself disqualify the judge. However, in this instance the Commission is considering the lawyer-relative acting as an attorney in the proceeding and not merely an unrelated member of the firm. The Commission has previously interpreted this Canon as requiring the judge's disqualification in those proceedings. See Advisory Opinions 88-346 (son acts as Assistant D.A.); 87-317 (brother or niece's husband); 86-282 (first cousin); 86-263 (uncle) and 85-236 (son). These opinions are hereby reaffirmed. The Canons make no distinction where the relationship arises through adoption.

Your second question is whether under Rule 13 of the Rules of Judicial Administration you may appoint a District Judge to hear certain cases. The Commission's authority to issue advisory opinions extends only to the application of the Canons of Judicial Ethics. We therefore must decline to advise you concerning the proper application of the Rules of Judicial Administration. The Canons, more specifically Canon 3C, would have application in this instance where the judge issues specific orders reassigning cases in which he is disqualified. Canon 3C prohibits the disqualified judge from selecting the judge to whom the case would be assigned. We further note that Canon 3 would require that the judge hear all matters coming before him, except those in which he is disqualified, unless the caseload of the court prohibits his doing so. In other words, a blanket reassignment order of certain types of cases must be justified by some reason other than the judge's disqualification.

Sincerely,

JUDICIAL INQUIRY COMMISSION