

Judicial Inquiry Commission

800 SOUTH MCDONOUGH STREET
SUITE 201
MONTGOMERY, ALABAMA 36104

May 31, 1989

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 certain proceedings. The facts presented are as follows: A local attorney has been appointed to be the guardian ad litem for the judge's niece in the administration of the judge's father's estate. Both the niece and the judge are named heirs in the judge's father's will. The attorney has cases in the judge's court almost daily. The judge specifically asks whether under these circumstances a judge is disqualified from sitting in any proceeding in which the attorney or his partner represents a party.

It is the opinion of the Commission that the judge is disqualified from sitting in any proceeding involving the attorney or his partner so long as the estate and the niece's interest therein remain unresolved. As long as the estate remains open and the judge's and the judge's niece's claims to the estate remain unresolved, there remains a legal adversarial relationship between them which would require the judge's disqualification in any proceeding involving the attorney or the firm of the attorney for either of them.

Disqualification is governed primarily by Canon 3C of the Alabama Canons of Judicial Ethics. That Canon provides that:

- (1) A judge should disqualify himself in a proceeding in which his disqualification is required by law or his impartiality might reasonably be questioned ...

The issue here is whether the judge's "impartiality might reasonably be questioned" in the present instance. The test under this Canon is whether a person of ordinary prudence, knowing the facts known to the judge, would find that there is a reasonable basis for questioning the judge's impartiality. *In re Sheffield*, 465 So. 2d 350 (Ala. 1984). It is the opinion of the commission that the existence of an adversarial relationship between the judge in his/her individual capacity and an attorney in a legal proceeding causes the judge's disqualification in any other legal proceeding involving the attorney or another member of the attorney's firm.

Sincerely,

JUDICIAL INQUIRY COMMISSION