

Judicial Inquiry Commission

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February 26, 1991

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 proceeding in which the judge's lawyer/son previously appeared as counsel of record to one of the parties. The proceeding in this instance is the modification of a divorce decree.

It is the opinion of the Commission that the judge is disqualified from sitting in any proceeding in which his lawyer/son has previously appeared as counsel of record.

The Commission's opinion in this instance is based on Canon 3C(l)(c) and (d). That Canon provides in pertinent part as follows:

- (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:

* * * *

- (c) He knows that he ... has a financial interest ... in a party to the proceeding or any other interest that could be substantially affected by the outcome of the proceeding;
- (d) He or his spouse,

* * * *

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

In In re Sheffield, 465 So.2d 315, (Ala. 1984), the Alabama Supreme Court applied Canon 3C(l) holding that disqualification occurs where a person of ordinary prudence, knowing the facts known to the judge, might reasonably question the judge's impartiality. We note also numerous advisory opinions in which the Commission has advised that a lawyer/relative's representation of a litigant causes the judge's disqualification in the matter in which the litigant appears. See, e.g., advisory opinions 90-411, 88-346, 87-319, 87-317, 87-316, 87-315, 87-314, 87-305 and 87-303.

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In the instant proceeding, the judge is being asked to modify a divorce decree in a matter in which the judge's son previously represented one of the parties in seeking the divorce. This being the case, disqualification continues to exist. However, since this disqualification exists under Canon 3C(l)(c) and (d), it can be remitted by following the procedures set out in Canon 3D.

Sincerely,

JUDICIAL INQUIRY COMMISSION