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[Withdraw & substituted by 94-513]

Judicial Inquiry Commission

800 SOUTH MCDONOUGH STREET
SUITE 201
MONTGOMERY, ALABAMA 36104

June 25, 1993

Dear Judges:

This is in response to your request for an advisory opinion from the Alabama Judicial Inquiry Commission. This request arises from the anticipated marriage of Judge Head's son and Judge Crowson's court reporter.

The facts are as follows:

There are three judges in the 18th Judicial Circuit: Judge Crowson, Judge Head, and Judge Joiner.

Judge Head was formerly a member of the law firm of Wallace, Ellis, Fowler, and Head (hereinafter, the Firm) prior to his becoming a judge in 1990. Judge Head's son, Frank Head, is presently a member of that same law firm.

Judge Crowson's court reporter is Jennifer Joiner. Judge Joiner is her first cousin. Ms. Joiner was hired before Judge Joiner became judge in 1993.

Attorney Head and Ms. Joiner are engaged and plan to be married.

Judge Head has recused himself from all cases involving the Firm.

The Commission's response to each of your specific questions is as follows:

1. During the period of engagement and after the marriage, Judge Joiner should not hear cases in which either attorney Head or any member of his law firm is involved. **93-486**

Under Canon 3C(l)(d), Alabama Canons of Judicial Ethics, a judge is disqualified from hearing any proceeding in which he is related by consanguinity or affinity within the fourth degree to an attorney representing a party to the proceeding. A judge's "first cousin's spouse is related to [the judge] within the fourth degree by affinity." Advisory Opinion 80-69.

Furthermore, “if a judge is related by the fourth degree of affinity or consanguinity to an attorney in the law firm, a judge should disqualify himself in any proceeding in which a member or attorney employed by the law firm represents a party to a proceeding.” Advisory Opinion 80-69. See also Advisory Opinions 86-258, 86-276, 89-366.

Although, Judge Joiner is not legally “related” to attorney Head during the period of attorney Head’s engagement to Judge’s Joiner’s first cousin, the requirement of Canon 2 that a judge avoid even the appearance of impropriety requires Judge Joiner’s disqualification during the engagement period.

This disqualification, both before and after the marriage, may be remitted under the conditions of and as provided in Canon 3D.

2. During the period of engagement and after the marriage of attorney Head and Ms. Joiner, Judge Crowson is not disqualified from presiding over cases in which attorney Head or any member of the Firm represents a party on the ground that attorney Head’s fiance or wife is the judge’s court reporter. The mere fact that a party is related by blood or marriage to the court reporter of the judge does not automatically require the judge’s disqualification. Advisory Opinion 79-62. **93-487**
3. Judge Joiner may not use Ms. Joiner as a court reporter, even on a temporary or case-by-case basis, because she is his first cousin. Under Ala. Code 1975, § 12-17-270, a court reporter may not be related to the trial judge within the fourth degree by consanguinity or affinity. Under Canon 2A, a judge must respect and comply with the law. **93-488**
4. Judge Head may not employ his son’s fiance or wife (Ms. Joiner) as a court reporter. Compare Advisory Opinion 88-328 (a judge’s wife’s relative by marriage may serve as a substitute court reporter for the judge because as between a husband and wife a person related to the wife by affinity is not related to the husband). See § 12-17-270. **93-489**
5. Under the circumstances, any disqualification that would exist after the marriage would also exist during the period of engagement. Therefore, any disqualification may be remitted prior to the marriage. **93-490**

This opinion has been reviewed by and adopted as the opinion of the Commission.