

Judicial Inquiry Commission

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July 23, 1993

This is in response to your request for an advisory opinion from the Judicial Inquiry Commission.

Your question is whether a judge is disqualified from presiding over a case in which one of the parties is represented by the judge's nephew's law firm where the nephew-attorney does not participate in the case. It is the holding of this Commission that a judge's disqualification is not required merely because of the fact that a party is represented by the law firm in which the judge's nephew is a partner. See J. Shaman, S. Lubet, J. Alfini, Judicial Conduct and Ethics §5.12 (1990).

In Advisory Opinion 88-338, this Commission held that a judge is not disqualified from sitting in a proceeding in which a party is represented by a member of a law firm in which the judge's uncle holds the position of senior partner.

“It is clear from the commentary [to Canon 3C(l)(d)] that the mere fact that a lawyer representing a party to a proceeding ‘is affiliated with a law firm with which a lawyer-relative is affiliated’ does not cause the judge’s disqualification. It is thus the opinion of the Commission that the mere existence of the [judge’s] uncle’s partnership interest is not a disqualifying factor. However, disqualification would occur if other circumstances exist under which the judge’s ‘impartiality might reasonably be questioned’ or the lawyer-relative may be known by the judge to have an interest in the law firm that could be ‘substantially affected by the outcome of the proceedings.’ Under these provisions of Canon 3C(l) and 3C(l)(d)(ii), a judge must examine the facts in each case where a lawyer-relative’s law firm is representing a party and must determine whether a factor exists under which his ‘impartiality might reasonably be questioned’ or whether the lawyer-relative has an interest which could be ‘substantially affected by the outcome of the proceeding.’ If either such factor exists the judge must disqualify himself. These provisions place a heavy burden on the judge in each case.” Advisory Opinion 88-338.

In Advisory Opinion 88-338, the Commission overruled or modified previous opinions including 79-64 (judge disqualified in any proceeding in which an attorney for record, judge’s adult son, is related to judge within the fourth degree by consanguinity or affinity); 80-76 (judge 93-491 must recuse him/herself in any proceeding in which judge’s brother’s law firm represents a party); 80-88 (judge may not preside at the trial of criminal case when judge’s brother or his/her brother’s partner represents defendant); 80-96 (judge must disqualify himself in proceedings in which judge’s daughter or a member of daughter’s law firm represents party); 81-101 (disqualification

required where senior member of judge's brother's law firm actually participated as assistant district attorney in trial or preparation of the case and it is known to judge that senior partner so participated); 82-169 (judge should disqualify himself from all proceedings in which his son-in-law or a member of his firm is the attorney for one of the litigants); 85-245 (judge may not hear routine matters and/or consent orders in proceedings in which one party is represented by a member of the law firm which employs judge's child as an associate); 86-258 (judge is disqualified in a case in which one of the parties is represented by judge's first cousin's law firm or in which an expert witness is the first cousin of judge's spouse); 86-263 (judge is disqualified from sitting in any proceeding involving his uncle or uncle's law firm); 86-268 (judge is disqualified in any proceeding in which his uncle-attorney's law firm represents a party).

Under the facts you have presented and under the terms of Canon 3C(d), Alabama Canons of Judicial Ethics, a judge should recuse himself in those situations where:

1. The judge has a personal bias concerning a party for any reason, including the fact that the party is represented by the judge's nephew's law firm. Canon 3C(l). This disqualification may not be remitted. Canon 3D.
2. The nephew-attorney is named a party to the proceedings, or an officer, director, or trustee of a party. Canon 3C(l)(d)(i). This disqualification may be remitted. Canon 3D.
3. The nephew-attorney is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding. Canon 3C(l)(d)(ii). This disqualification may be remitted. Canon 3D.
4. The nephew-attorney is likely to be a material witness in the proceeding. Canon 3C(l)(d)(iii). This disqualification may be remitted. Canon 3D.
5. The existence of any other facts or circumstances under which the judge's impartiality might reasonably be questioned. Canon 3C(l). "[T]he Canon 3C(l) recusal test is: 'Would a person of ordinary prudence in the judge's position knowing all of the facts known to the judge find that there is a reasonable basis for questioning the judge's impartiality?'" In re Sheffield, 465 So.2d 350, 356 (Ala. 1984). Disqualifications on this basis can not be remitted. Canon 3D.

Thus, the mere fact that the judge's nephew-attorney has given legal advice to a party is not a basis for the judge's disqualification where the nephew-attorney does not participate in the 93-491 case. However, where the judge knows that his nephew-attorney has given legal advice to a party and such legal advice is related to the matters in controversy, there exists a reasonable basis for questioning the judge's impartiality and the judge is disqualified under Canon 3C(l). That disqualification may not be remitted.

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This opinion has been reviewed by and is the opinion of the Judicial Inquiry Commission.