

Judicial Inquiry Commission

800 SOUTH MCDONOUGH STREET
SUITE 201
MONTGOMERY, ALABAMA 36104

January 28, 1994

This is in response to your request for an advisory opinion from the Alabama Judicial Inquiry Commission. The advisory opinions (93-486, 487, 488, 489, 490) contained in our letter dated June 25, 1993, are hereby withdrawn and this opinion is substituted.

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 were recently married.

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

The Commission's response is as follows:

1. Because Judge Joiner's first cousin is the wife of attorney Head, Judge Joiner should not hear cases in which either attorney Head or any member of his law firm is involved.

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.

This disqualification may be remitted under the conditions of and as provided in Canon 3D.

2. 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 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.

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. However, that section specifically provides that "[t]he provisions of this section shall not apply to circuits which consist of only one county and have three or more than three judges. The Eighteenth Judicial Circuit is composed of Shelby County and has three circuit judges. Hence, the statutory prohibition is not applicable here.

3. Where justifiable cause exists, such as when Judge Crowson is hearing a case in which Attorney Head or a member of the Firm represents a party, Judge Joiner may utilize Ms. Joiner/Head as his court reporter on a temporary or case-by-case basis even though she is his first cousin. See § 12-17-270.
4. Where justifiable cause exists, such as when Judge Crowson is hearing a case in which Attorney Head or a member of the Firm represents a party, Judge Head may utilize his son's wife as a court reporter on a temporary or case-by-case basis.

In connection with paragraphs numbers 2, 3, and 4, whenever Judge Joiner or Judge Head utilize Mrs. Joiner/Head as a temporary court reporter, or when Judge Crowson utilizes Mrs. Joiner/Head as a court reporter in a case in which attorney Head represents a party, the judge should inform the parties and their attorneys of the particular relationship present. This announcement will insure that any appearance of impropriety is avoided.

Although this Commission strongly discourages the practice, we note that Judge Head may preside over cases in which his son represents a party provided a waiver is obtained from both the parties and their attorneys. See Advisory Opinion 94-512.

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