

## Judicial Inquiry Commission

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The Judicial Inquiry Commission has considered your request for an advisory opinion concerning whether a judge may preside over a case in which one of the litigants is represented by either a first cousin of the judge or another attorney in the cousin's law firm.

A judge is disqualified under Canon 3C(1)(d) in any proceeding in which an attorney of record is related to the judge within the fourth degree by consanguinity or affinity. Thus, a judge is disqualified from presiding over a case in which one of litigants is represented by a first cousin of the judge. However, this disqualification may be remitted under the procedures outlined in Canon 3D. See, Advisory Opinion 80-69.

A judge's disqualification is not required merely because a party is represented by a law firm in which the judge's first cousin is a member. See, J. Shaman, S. Lubet, J. Alfani, Judicial Conduct and Ethics §5.12 (1990). The mere fact that a lawyer representing a party to a proceeding is affiliated with a law firm with which a relative of the judge also is affiliated does not cause the judge's disqualification. However, the judge would be disqualified if other circumstances exist under which the judge's "impartiality might reasonably be questioned" (Canon 3C(1)), or if the lawyer-relative is known by the judge to have an interest in the law firm that could be substantially affected by the outcome of the proceeding." Canon 3C(1)(d)(ii). A judge must examine the facts in each case in which a first cousin's law firm is representing a party and determine whether a factor exists under which his "impartiality might reasonably be questioned", or whether his cousin has an interest which could be "substantially affected by the outcome of the proceeding." Advisory Opinions 88-338, 93-491 and 94-534.

In considering these two issues, the judge must be ever cognizant of the provisions of Canon 1 setting out the object of the Canons, the preservation of the integrity and independence of the judiciary. The Canon 3C(1) recusal test concerning whether the judge's "impartiality might reasonably be questioned" 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). For example, a reasonable basis for questioning the judge's impartiality would exist if the judge knew that his cousin had given legal advice to a party related to the matter in controversy. Advisory Opinion 93-491. In determining whether the judge's cousin has an interest which could be "substantially affected by the outcome of the proceeding," the judge should consider any benefit or loss he knows the cousin might receive, whether such benefit or loss is such that a reasonable person

might question the judge's impartiality as a result, and the extent or degree of the interest involved. L. Abramson, Judicial Disqualification Under Canon 3C of the Code of Judicial Conduct at 64-65 (American Judicial Society, 1986).

A judge also is disqualified if he has a personal bias or prejudice concerning a party for any reason, including the fact that a party is represented by the judge's cousin's law firm. Canon 3C(l)(a). A disqualification due to personal bias may not be remitted.

Disqualification due to knowledge that the judge's lawyer-relative has an interest that could be "substantially affected by the outcome of the proceeding" is subject to remittal under Canon 3D. However, disqualification due to the existence of other facts or circumstances under which the judge's "impartiality might reasonably be questioned" is not subject to remittal. Canon 3D. Advisory Opinion 93-491.