

Judicial Inquiry Commission

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October 27, 1995

The Judicial Inquiry Commission has considered your request for an opinion concerning whether a judge is disqualified from sitting in a case in Lamar County where the judge's mother's half-sister is a plaintiff in a case in Pickens County that is against the same defendants and which makes the same allegations of fraud.

It is the opinion of the Commission that the judge is disqualified under the general provision in Canon 3C(l) which directs that a judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned. The test under Canon 3C(l) is whether "a person of ordinary prudence in the judge's position knowing all of the facts known to the judge would find that there is a reasonable basis for questioning the judge's impartiality." In re Sheffield, 465 So. 2d 350, 356 (Ala. 1984). Recusal is required under Canon 3C(l) when facts are shown which make it reasonable for members of the public or a party or counsel to question the impartiality of the judge. Id. at 355-356.

Under the facts presented, the cases in the two counties are identical except for the identities of the parties plaintiff. In such a situation, the close familial relationship of the judge to a party plaintiff in one of the suits is a reasonable basis to question the judge's impartiality. Thus, the judge should recuse himself from the Lamar County case.

The Commission does not suggest that the judge is actually biased in the Lamar County case. However, disqualification is required where Canon 3C(l) applies even in the absence of actual bias, which is separately governed by Canon 3C(l)(a). Since the Commission has determined that the judge is disqualified under the general provision in Canon 3C(l), it does not address herein the possibilities of disqualification under Canons 3C(l)(a), 3C(l)(d)(ii), and 3C(l)(d)(iii).