

Judicial Inquiry Commission

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The Commission has considered your request for an advisory opinion as to whether a judge is disqualified from hearing appeals in which a party is represented by a law firm which employs the judge's law student son as a staff assistant.

The Commission has in the past issued a number of opinions concerning whether a judge is disqualified from hearing cases due to employment of the judge's child (or other close relative) by law firms involved in those cases. The Commission has consistently held that the mere fact of such employment does not cause disqualification, but that the judge may be disqualified, depending upon the particular circumstances. Advisory Opinion 81-125 (judge's child employed as paralegal in law firm); Advisory Opinion 82-134 (judge's child employed as secretary to attorney); Advisory Opinion 84-206 (judge's law student son employed by firm as summer law clerk); Advisory Opinion 84-217 (judge's sister-in-law employed as secretary to attorney); Advisory Opinion 85-239 (judge's son employed by firm as law clerk); Advisory Opinion 90-401 (judge's teen-aged daughter employed by firm as part-time clerical assistant); and Advisory Opinion 92-444 (judge's close relative employed by firm as law clerk).

If the nature of the judge's child's employment is such that the child has an interest, financial or otherwise, in the particular case that could be substantially affected by the outcome of the proceeding, then disqualification is required under Canon 3C(d)(ii). For example, if the judge's son's salary or continued employment is contingent upon the outcome of the proceeding then the judge would be disqualified. Advisory Opinion 92-444.

The other pertinent section of the Canons of Judicial Ethics is the general provision of Canon 3C(l) which states:

"A judge should disqualify himself in a proceeding in which ... his impartiality might reasonably be questioned ..."

A judge must himself assess all of the facts and circumstances surrounding each particular proceeding, his relationship to the employee of the firm, and the employee's relationship to the proceeding to determine whether the judge is disqualified under this provision. Advisory Opinions 81-125, 82-134, 84-217, 90-401, and 92-444.

In each instance, the judge has the burden of assessing the facts and circumstances to determine the existence of facts or circumstances which might cause his impartiality to

be reasonably questioned. For example, if the judge's son has discussed the proceeding with the judge or has brought circumstances involving the matter to the judge's attention, such action would cause disqualification. Advisory Opinion 90-401. The judge would also be disqualified in any case in which his child participated to the extent that the judge's impartiality is in question. Advisory Opinions 85-239 and 92-444. The Canon -3C(l) 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 matter of Sheffield, 456 So.2d 350, 355-356 (Ala. 1984).

Some of the factors a judge should consider in determining whether or not he is disqualified are: the nature of the relationship between the judge and the staff assistant; the assistant's degree of participation in the proceeding and the significance of the assistant's contribution to the outcome of the proceeding (e.g., performance of significant legal research, investigation of the facts, assisting in the courtroom, preparation of briefs or other pertinent legal documents); and whether the assistant has discussed the case with the judge. The totality of the circumstances must be considered in each case. For example, in Advisory Opinion 92-444, the Commission held that a judge would not be disqualified when his law clerk relative merely attended a deposition and later discussed that deposition with the attorney by whom the clerk was employed, but that the judge might be disqualified if the clerk prepared questions for the deposition and actually assisted the attorney at the deposition.

In any proceeding in which the judge's son is employed by one of the attorneys or law firms involved, the judge should disclose that fact to the attorneys and determine whether or not he is disqualified. Advisory Opinion 92-444. Should the judge determine that he is disqualified under Canon 3C(1)(d)(ii), Canon 3D provides for waiver of disqualification by written agreement.

The Commission will be glad to address any specific factual situations with which you may be presented.

Respectfully,

JUDICIAL INQUIRY COMMISSION