

Judicial Inquiry Commission

800 SOUTH MCDONOUGH STREET
SUITE 201
MONTGOMERY, ALABAMA 36104

September 27, 1996

The Commission has considered your request for an advisory opinion as to whether a judge is disqualified from hearing cases in which a certain hospital is a party because the judge's father and brother are doctors who have active staff privileges at the hospital and also are members of a 44-member non-profit corporation that elects the board of trustees for the hospital. The judge's relatives receive no compensation for their membership in the foregoing non-profit corporation and have no financial interest at risk in litigation involving the hospital.

It is the opinion of this Commission that a judge is not disqualified from hearing cases in which a certain hospital is a party merely because his father and brother are doctors who have staff privileges at the hospital. See Advisory Opinions 80-73, 82-133, 88-322, 88-345, and 92-462. It is also the opinion of this Commission that the fact that the judge's relatives are members of a non-profit corporation that elects the board of trustees of the hospital does not cause disqualification of the judge so long as the relatives' only fiduciary responsibility with respect to the hospital as members of the corporation is to vote in the election of members of the hospital's board. See Advisory Opinion 93-504. Canon 3C(l)(d)(i) requires disqualification where a relative within the fourth degree of relationship to a judge is an officer, director or trustee of a party.

Of course, if the judge has a personal bias or prejudice concerning the hospital, or personal knowledge of disputed evidentiary facts concerning the proceeding, the judge would be disqualified under Canon 3C(l)(a). The judge also would be disqualified under Canons 3C(l)(d)(ii) and 3C(l)(d)(iii) in any case in which his father or brother was known to the judge to have an interest that could be substantially affected by the outcome of the proceeding or in which the judge knows that his father or brother is likely to be a material witness. See Advisory Opinions 80-73, 81-103, 82-133, 88-322, 88-345, 89-366, 92-462, and 95-564. Any disqualification under Canon 3C(l)(d) is subject to remittal under Canon 3D.

Sincerely,

JUDICIAL INQUIRY COMMISSION