

## Judicial Inquiry Commission

800 SOUTH MCDONOUGH STREET  
SUITE 201  
MONTGOMERY, ALABAMA 36104

December 13, 1996

The Judicial Inquiry Commission has considered your request for an advisory opinion whether a probate judge is disqualified from hearing cases in which a party is represented by either the judge's son-in-law or the other member of the law firm to which the judge's son-in-law belongs.

A judge is disqualified under Canon 3C(1)(d) in any proceeding in which an attorney is related to the judge within the fourth degree of consanguinity or affinity. Canon 3C is applicable to a probate judge when the judge is performing judicial duties. Compliance with The Canons of Judicial Ethics, Sec. C, PROBATE JUDGE. Thus, a probate judge is disqualified from presiding over a case in which the judge's son-in-law represents a party, including representation of minors or incompetents. 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 member of a law firm in which the judge's son-in-law is also a member. See J. Shaman, S. Lubet, J. Alfani, Judicial Conduct and Ethics, Sec. 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 probate judge must examine the facts in each case in which his son-in-law's law firm is representing a party and determine whether a factor exists under which his "impartiality might reasonably be questioned," or whether his son-in-law 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 son-in-law had given legal

advice to a party related to the matter in controversy. Advisory Opinion 93-491. In determining whether the judge's son-in-law 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 son-in-law 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 son-in-law's firm. Canon 3C(1)(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.

Finally, a copy of Advisory Opinion 95-586 is enclosed for your reference. This opinion deals with the special circumstance of change of counsel after significant proceedings.

Yours very truly,

JUDICIAL INQUIRY COMMISSION