

Judicial Inquiry Commission

800 SOUTH MCDONOUGH STREET
SUITE 201
MONTGOMERY, ALABAMA 36104

March 14, 1997

The Judicial Inquiry Commission has considered your request for an advisory opinion concerning the effect of a judge's confidential judicial assistant's husband's running for and serving in the Alabama Legislature.

The Commission is of the opinion that there may be instances in which you may be disqualified unless the confidential judicial assistant takes no part in the proceedings and does not discuss any aspect of the case with you. Otherwise, you, the judicial assistant, and her husband can serve without problem. The Commission is also of the opinion that you and the confidential assistant's husband can appear on the same ballot together.

Canon 3C(l) provides, in part, "A judge should disqualify himself in a proceeding in which his disqualification is required by law or his impartiality might reasonably be questioned ..." The Commission has not previously had the opportunity to consider whether this provision requires the judge's disqualification where the judge's confidential assistant's husband is a litigant. The Commission has previously concluded, however, that for the purpose of determining the applicability of the Canons, a judge's bailiff and secretary stand in the same position as a judge. See Advisory Opinions 88-333, 85-231, and 83-190. Consistent with those opinions, if the position of the judge's confidential assistant would disqualify her, it would disqualify the judge. Again, however, consistent with those opinions, the disqualification would not apply if the confidential assistant takes no part in the proceeding and does not discuss any aspect of the proceeding with the judge.

The question then becomes: what happens when the confidential judicial assistant's husband becomes a litigant? Obviously he could become a litigant in his own right. Whether he could become a litigant in his capacity as legislator is a legal question which is beyond the scope of the Commission's role. If the husband became a litigant before the judge in either capacity, however, the analysis above would apply.

Nothing in the Canons precludes the husband from running for or serving in the Legislature. Moreover, you have no control over whether he runs or is on the same ballot as you are.

The remainder of your questions are vague and abstract. The Commission cannot answer them in any way other than to point out that Canon 2 requires you to avoid impropriety and the appearance of impropriety.