

JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 99-724

DISQUALIFICATION WHEN A RELATIVE OF THE JUDGE IS AN OFFICER, DIRECTOR, OR TRUSTEE OF A PARTY

ISSUE

Is a judge disqualified to hear custody, child support, and other cases filed by the Department of Human Resources if his wife is the director of the local Department of Human Resources office? **Answer:** Yes, but absent additional circumstances, the disqualification is subject to remittal.

FACTS

The judge's spouse is the director of the Department of Human Resources office in the county where the judge presides as the sole district judge. The Department of Human Resources files cases seeking custody, child support, and other relief in the district court.

DISCUSSION

Canon 3C(1)(d)(i) of the Alabama Canons of Judicial Ethics provides the following:

A judge should disqualify himself in a proceeding in which his disqualification is required by law or his impartiality might reasonably be questioned, including but not limited to instances where:

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(d) He or his spouse, or a person within the fourth degree of relationship to either

of them, or the spouse of such a person:

(i) Is named a party to the proceeding, or an officer, director, or trustee of a party.

Thus, the canons expressly provide that a judge is disqualified in a proceeding in which the Department of Human Resources is a party when his spouse is the director of the county Department of Human Resources office.

Canon 3D provides for remittal of disqualification that arises under the terms of Canon 3C(1)(d). Therefore, disqualification due to the judge's spouse being a director of the county DHR office may be remitted under the procedure specified in Canon 3D. Advisory Opinions 86-276 and 89-366.

Of course, the judge also would be disqualified under other provisions in the canons in any case in which the Department of Human Resources is a party and (a) the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding, as a result of his spouse's employment (Canon 3C(1)(a)); (b) the judge's spouse is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding (*e.g.*, the outcome might affect the spouse's employment status) (Canons 3C(1)(c) and 3C(1)(d)(ii)); (c) the judge's spouse is to the judge's knowledge likely to be a material witness in the proceeding (Canon 3C(1)(d)(iii)); or, (d) the judge's spouse has some other personal involvement in the matter in controversy that requires disqualification

through causing the judge's impartiality to be reasonably questionable (Canon 3C(1)). Advisory Opinions Advisory Opinions 81-103, 86-286, 88-322, 88-345, 97-632, and 99-721. As previously noted, disqualification under Canon 3C(1)(d) is subject to remittal; disqualification under Canon 3C(1)(c) also is subject to remittal under Canon 3D. However, if the judge is disqualified due to personal bias or prejudice, personal knowledge of disputed evidentiary facts, or additional facts or circumstances causing the judge's impartiality to be reasonably questionable, such disqualification would not be subject to remittal.

REFERENCES

Alabama Advisory Opinions 81-103, 86-276, 86-286, 88-322, 88-345, 89-366, 97-632, and 99-721.

Alabama Canons of Judicial Ethics, Canons 3C(1), 3C(1)(a), 3C(1)(c), 3C(1)(d)(i), 3C(1)(d)(ii), 3C(1)(d)(iii), and 3D.

This opinion is advisory only and is based on the specific facts and questions submitted by the judge who requested the opinion pursuant to Rule 17 of the Rules of Procedure of the Judicial Inquiry Commission. For further information, you may contact the Judicial Inquiry Commission, 800 South McDonough Street, Suite 201, Montgomery, Alabama 36104; tel.: (334) 242-4089; fax: (334) 240-3327; e-mail: jic@alalinc.net.