

## JUDICIAL INQUIRY COMMISSION

DATE ISSUED: APRIL 30, 1999

ADVISORY OPINION 99-727

### DISQUALIFICATION WHEN A RELATIVE OF THE JUDGE IS AN ATTORNEY HANDLING A SIMILAR CASE

#### ISSUE

Is a judge disqualified to hear cases against an insurance company because the judge's spouse represents a plaintiff in a case pending in another court that involves the same company and similar issues? **Answer:** No, not unless certain additional circumstances exist.

#### FACTS

The judge's spouse is a practicing attorney who is currently representing a plaintiff against an insurance company in another circuit. The company has cases with similar issues pending against it in the judge's court.

#### DISCUSSION

Disqualification is governed by Canon 3C of the Alabama Canons of Judicial Ethics. Canon 3C(1) provides that a judge is disqualified in any proceeding in which "his impartiality might reasonably be questioned." It also lists some instances in which disqualification is specifically required.

The judge is, of course, disqualified if he has a personal bias or prejudice concerning a party as a result of his spouse's handling of a similar case. Canon 3C(1)(a) requires disqualification whenever a judge "has a personal bias or prejudice concerning a party." Whether any of the remaining bases of disqualification apply depends on facts that have not been provided to the Commission

concerning the "similar issues" involved in the cases in question.

The Commission is aware that the judge previously practiced law with his spouse. Canon 3C(1)(b) requires disqualification when a lawyer with whom the judge previously practiced law served during such association as a lawyer in the matter in controversy. The Alabama Supreme Court has explained that a "matter," as in a matter in controversy, is a "subject (as in a fact, event or course of events, or a circumstance, situation, or question) of interest or relevance." Rushing v. City of Georgiana, 361 So.2d 11, 12 (Ala. 1978). The disqualification in Canon 3C(1)(b) is not limited to situations in which the same case in which the attorney previously served as attorney is before the judge. Rather, it includes cases involving or arising from the same fact situation and may include similar or related matters. The judge is disqualified if his spouse served as a lawyer in the matter in controversy before him during the course of their legal practice together.

The judge also is disqualified if his spouse has a financial interest in the subject matter in controversy in the cases before him, or any other interest that could be substantially affected by the outcome of those proceedings. Canon 3C(1)(c).

The Commission is of the opinion that, absent any of the foregoing particular grounds of disqualification, the mere fact that the judge's spouse is handling litigation of the same general character against the same defendant in another court is not sufficient to draw the judge's impartiality into reasonable question. See Advisory Opinion 98-690. If the

“similar issues” involve only the application of the specific facts in each case to settled law, a “person of ordinary prudence in the judge’s position knowing all of the facts known to the judge would [not] find that there is a reasonable basis for questioning the judge’s impartiality.” In re Sheffield, 465 So.2d 350, 356 (Ala. 1984). However, if the cases involve a novel legal proposition or substantially similar factual allegations, a reasonable

person might well question the judge’s impartiality. Thus, if the “similar issues” in the cases are of a unique or otherwise precedent-setting nature, or if the factual allegations are closely related, the judge is disqualified under the general provision in Canon 3C(1).

In Advisory Opinion 95-580, this Commission decided that a judge was disqualified to hear a case when his aunt was a plaintiff in a case in another county against the same defendant in which she made the same allegations of fraud. Under the facts presented, the two cases were identical except for the identities of the parties plaintiff. On the other hand, in Advisory Opinion 93-477, the Commission held that a judge was not disqualified from presiding over a bad faith claim for non-payment against an insurance company on

account of the fact that his mother-in-law had an action against the same insurance company pending before another court that included an unrelated bad faith claim for non-payment.

## REFERENCES

Alabama Advisory Opinions 93-477, 95-580, and 98-690.

Alabama Canons of Judicial Ethics, Canons 3C(1), 3C(1)(a), 3C(1)(b), 3C(1)(c).

In re Sheffield, 465 So.2d 350, 356 (Ala. 1984).

Rushing v. City of Georgiana, 361 So.2d 11, 12 (Ala. 1978).

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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.