

JUDICIAL INQUIRY COMMISSION

DATE ISSUED: DECEMBER 10, 1999

ADVISORY OPINION 99-742

APPOINTMENT OF DEFENSE COUNSEL: LANDLORD/TENANT, FAMILIAL, AND/OR COURT STAFF RELATIONSHIP WITH ATTORNEY

ISSUE

I. May a judge appoint his cousin, who is renting office space from the judge's wife, as counsel for indigent defendants whose cases are on his colleagues' dockets? **Answer:** No.

II. May a judge appoint his secretary's nephew to such cases when that attorney is renting an apartment from the judge?

Answer: No, not under the facts presented.

FACTS

The judges in a certain district court rotate handling bond hearings at which attorneys are appointed to represent indigent criminal defendants, each judge handling this duty one week per month. The judges each maintain a list of attorneys eligible for appointment. The inquiring judge exercises discretion in making appointments. One attorney to whom appointments could be made is the cousin of the inquiring judge; this attorney rents his office from the judge's wife. Another attorney to whom appointments could be made is the judge's secretary's nephew; this attorney rents an apartment from the judge.

DISCUSSION

The Commission has previously held that a judge is disqualified from appointing an attorney in an indigent criminal case where the attorney is related to the judge or the judge's spouse within the fourth degree of

consanguinity or affinity. Advisory Opinions 80-91, 82-138, and 87-316. These opinions were based on the disqualifying kinship described in Canon 3C(1)(d). It remains the opinion of the Commission that a judge is disqualified to appoint an attorney related to the judge within the prohibited degree of kinship. Thus, the Commission concludes that the first question presented must be answered in the negative: a judge may not appoint his cousin as counsel for indigent defendants.

Turning to the second issue, the relationship between the attorney and the appointing judge's secretary does not, in the opinion of the Commission, constitute a bar to the making of such an appointment so long as the judge's secretary has no participation in any proceeding to which her nephew is appointed. In Advisory Opinion 88-333, the Commission decided that a judge was not disqualified from a proceeding in which a party was represented by his secretary's spouse, so long as the secretary took no part in the proceeding. This opinion followed earlier opinions involving attorneys who were closely related to the judge's bailiff. Advisory Opinions 83-190 and 85-231. These opinions were made upon consideration of the general provision in Canon 3C(1) disqualifying a judge when the judge's "impartiality might reasonably be questioned."

However, the Commission has long held that a judge is disqualified from sitting in any proceeding in which an attorney appears who is a tenant of the judge or the judge's spouse. Advisory Opinions 81-115, 82-130, 82-164, 86-255, and 97-660. *See also*, Advisory Opinion 97-640. In Advisory Opinions 81-115

and 82-130, the Commission noted that such a business relationship whereby the judge or his immediate family receives financial benefit from the rental property tends to reflect adversely on the judge's impartiality in any proceeding in which the tenant/attorney might appear. The Commission has explained that a judge's impartiality might reasonably be questioned in instances where the judge's own financial interests could be directly affected by the financial well-being of an attorney appearing before him. Advisory Opinions 82-130 and 86-275.

In Advisory Opinion 82-130, the Commission commented that the propriety of a judge appointing a tenant/attorney to represent a defendant in a criminal proceeding might depend on the manner in which such appointments were routinely made. The Commission declined to further address this question due to lack of sufficient information concerning the manner in which such appointments were made in that case.

Under the circumstances presented in the current inquiry, it is the opinion of the Commission that the judge may not appoint an attorney who rents an apartment from him to

indigent criminal cases. Since the financial well-being of the attorney could affect the judge's own financial interests, the judge's impartiality in exercising his discretion to appoint this attorney might reasonably be questioned.

REFERENCES

Alabama Advisory Opinions 80-91, 81-115, 82-130, 82-138, 82-164, 83-190, 85-231, 86-255, 87-316, 88-333, 97-640, 97-660.

Alabama Canons of Judicial Ethics, Canons 3C(1) and 3C(1)(d).

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.