

JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 01-774

DISQUALIFICATION WHEN THE JUDGE IS A TRUSTEE OF THE ENTITY THAT GOVERNS THE DEFENDANTS' EMPLOYER IN AN ACTION RELATED TO THE EMPLOYMENT

Canon 3C(1) apply to the question presented. Thus, the issue is whether the judge is disqualified under that canon's general provision requiring disqualification when the judge's "impartiality might reasonably be questioned."

ISSUES

Is a judge disqualified to hear a personal injury action in which the doctor defendants are employed by a university hospital when the judge is a trustee for the university? **Answer:** Yes, the circumstances create a reasonable question as to the judge's impartiality.

"Recusal is required under Canon 3C(1) when 'facts are shown which make it reasonable for members of the public or a party, or counsel opposed to question the impartiality of the judge.' *Acromag-Viking v. Blalock*, 420, So.2d 60, 61 (Ala. 1982). See, also, *Wallace [v. Wallace]*, 352 So.2d 1376, 1379, (Ala.Civ.App. 1977)]. Specifically, the Canon 3C(1) test 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?' Thode, *The Code of Judicial Conduct - The First Five Years in the Courts*, 1977 Utah L.Rev. 395, 402."

FACTS

A circuit judge has been assigned a tort action involving birth injuries that names as defendants three doctors employed by a university's hospital, two insurance companies who insure the doctors, and a university clinic. The judge is a trustee of the university; the university is the governing body for the hospital. When the case was originally filed, the university's health services foundation also was named as a defendant, but the plaintiff has amended the complaint to delete the foundation as a party. None of the attorneys in the case object to the judge hearing the case. The judge states that he has no personal bias or prejudice that would affect his judgment, and he has no knowledge of disputed evidentiary facts concerning the proceeding.

Matter of Sheffield, 465 So.2d 350, 355-356 (Ala. 1984). The issue under Canon 3C(1) is not whether the judge is impartial in fact, but rather whether another person, knowing all of the circumstances, might reasonably question the judge's impartiality. *Ex parte Duncan*, 638 So.2d 1332, 1334 (Ala. 1994). The recusal test stated in Canon 3C(1) sometimes bars trial by a judge who has no actual bias in the case. *Matter of Sheffield*, 465 So.2d at 356.

DISCUSSION

None of the specific grounds of disqualification stated in the subsections of

Canon 3C(1)(d)(i) requires disqualification whenever a judge is a trustee of a party. Although the university of which the judge is

a trustee is not a party to the case, the suit involves the professional conduct of employees of the university's hospital. The facts and issues presented may reflect upon the university's hospital and/or its clinic. Under these circumstances, it is the opinion of the Commission that a person of ordinary prudence might reasonably question the impartiality of the judge. Thus, the Commission concludes that the judge is disqualified to hear the case.

REFERENCES

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

Ex parte Duncan, 638 So.2d 1332 (Ala. 1994).

Matter of Sheffield, 465 So.2d 350 (Ala. 1984).

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.