

JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 01-782

DISQUALIFICATION DUE TO ACQUAINTANCE WITH A PARTY AND/OR PRIOR RECUSAL FROM ANOTHER CASE

ISSUES

Is a judge disqualified to hear a particular case, either on account of acquaintance with parties and/or due to having recused in another case in which a party's husband was a defendant? **Answer:** No.

FACTS

A circuit judge has been asked to recuse herself from a case in which a particular person is a plaintiff on the ground that the judge had previously recused herself from a case in which that person's spouse was a defendant. Another defendant in the former case was a corporation of which the current party's husband is president and CEO. There are disputed assertions in the present case that the current party's husband may have a financial interest in the matter and that he may be the real party in interest.

The basis for the judge's recusal in the former case was that the judge's husband owned stock in the corporate defendant in that case. The corporation is not involved in the current case. The judge states that the number of shares of the corporation her husband owns would be considered *de minimis* under the current Canon 3C(3)(c).

The judge has been acquainted with the current party and the party's husband for many years. More than twenty years ago, she attended a couple of political functions held in

their home for a gubernatorial candidate, and she saw them on many other occasions during the course of that campaign. Several years ago, the judge attended an engagement party the couple hosted for the son of one of the judge's friends. She occasionally sees them at social and public engagements and exchanges brief pleasantries with them. In addition, the judge's husband occasionally sees another party plaintiff at a local popular breakfast restaurant.

The judge states that she knows she can be fair and impartial in the case pending before her.

DISCUSSION

Under the facts presented, the Commission can find no basis for disqualification of the judge related to her recusal from an earlier case in which the spouse of a current party was a defendant. Recusal in the earlier case was based on the judge's husband's ownership of a financial interest in a corporation that was also a party in that case. This disqualification was specifically required by the terms of Canon 3C(1)(c) in effect at the time. The judge believes that her husband's ownership interest would not be disqualifying were the former case to be before her now since the definition of disqualifying financial interest has been amended to exclude ownership of a *de minimis* portion of the securities of a publicly traded corporation. The Commission need not consider what constitutes a *de minimis* interest, since the facts before the Commission do not indicate that the corporation is a party in the present suit. The basis for disqualification under Canon 3C(1)(c) that existed in the former suit simply does not exist in the present one.

Under Canon 3C(1), Alabama Canons of Judicial Ethics, recusal is required 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). Specifically, the test under Canon 3C(1) 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?” *Matter of Sheffield*, 465 So.2d 350, 356 (Ala. 1984).

In the opinion of the Commission, neither the fact that the spouse of the current plaintiff is president and CEO of the corporation involved in the former case nor the spouse’s possible personal interest in the present case create a reasonable question as to the judge’s impartiality.

The Commission has addressed questions involving a judge’s friendship or other association with a party on a number of prior occasions. *See, e.g.*, Advisory Opinions 93-510, 93-511, 95-541, 96-613, 99-729, and 01-776. “Whether or not disqualification is required when a friend appears as a party to a suit before a judge depends on how personal the relationship is between the judge and the party.” J. Shaman, S. Lubet, J. Alfini, *Judicial Conduct and Ethics* §4.15 at 137 (3rd ed. 2000). “[I]t is an inescapable fact of life that judges serving throughout the State will necessarily have had associations and friendships with parties coming before their courts. A judge should not be subject to disqualification for such ordinary relations with his fellow citizens.” *See, Ex parte Hill*, 508 So. 2d 269, 272 (Ala. Civ. App. 1987) (judge’s recusal upheld where judge recused

himself because “there has been a long association between the parties and this judge and his wife, from living together at an early age in an apartment complex to communication and schooling of the children, church affiliation and many other associations over the years”). *See also, Clemmons v. State*, 469 So. 2d 1324 (Ala. Crim. App. 1985) (“that the trial judge and victim knew each other and possibly enjoyed a friendship both professionally and socially is not reason enough to require the judge to recuse himself”).

The type of close personal friendship that would require disqualification of a judge under Canon 3C(1) is not present in this case. *Compare, Bryars v. Bryars*, 485 So.2d 1187 (Ala. Civ. App. 1986). Thus, the Commission concludes that the Canons of Judicial Ethics do not require disqualification of the judge on account of the acquaintanceships in this case.

REFERENCES

Alabama Advisory Opinions 93-510, 93-511, 95-541, 96-613, 99-729, and 01-776.

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

Acromag-Viking v. Blalock, 420 So.2d 60 (Ala. 1982).

Bryars v. Bryars, 485 So.2d 1187 (Ala. Civ. App. 1986).

Clemmons v. State, 469 So. 2d 1324 (Ala. Crim. App. 1985).

Ex parte Hill, 508 So. 2d 269 (Ala. Civ. App. 1987).

J. Shaman, S. Lubet, J. Alfini, *Judicial Conduct and Ethics* §4.15 (3rd ed. 2000).

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.