

JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 01-788

DISQUALIFICATION WHEN A RELATIVE OF THE JUDGE OWNS A BAIL BONDING COMPANY

judge has recused himself from hearing any final bond forfeitures regarding any bondsman.

ISSUES

I. May a judge require a defendant to post bond through a professional bonding company when two uncles of the judge own one of the professional bonding companies that do business in his jurisdiction? **Answer:** Yes.

II. May a judge issue a conditional bond forfeiture against his uncles' bonding company when a defendant fails to appear for court? **Answer:** No.

III. May a judge set aside a conditional bond forfeiture against his uncles' bonding company? **Answer:** No.

IV. May a judge set a bond or rule on a motion to increase or decrease a defendant's bond when he knows that his uncles are or will become the bondsmen? **Answer:** No.

FACTS

A district judge has two uncles who jointly own one of the several professional bail bonding companies in his jurisdiction. It is common practice for judges to require a defendant to post bond through a professional bonding company when the judge believes the person is a flight risk. Conditional bond forfeitures may be entered when a defendant fails to appear for court, and it is a common practice to set aside conditional bond forfeitures when the defendant has a meritorious reason for not appearing. The

DISCUSSION

Canon 3C(1) requires disqualification of a judge whenever the judge's "impartiality might reasonably be questioned." Canon 3C(1)(d)(ii) specifically states that a judge is disqualified in any proceeding in which a person within the fourth degree of relationship to the judge or the judge's spouse is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding.

In Advisory Opinion 00-756, the Commission concluded under the general provision in Canon 3C(1) that a judge may not adjudicate any matter involving a bond issued by a bail bonding company of which the judge's paralegal is an owner. Given the financial interest the paralegal would have in the outcome of cases in which a bond issued by her bonding company was involved, the Commission noted that hearing such matters would also be contrary to Canons 1, 2A and 2C in that it would create an appearance of impropriety, fail to promote public confidence in the integrity and impartiality of the judiciary, and convey the impression that others were in a special position to influence the judge.

The Commission sees no conflict with the Canons in the judge requiring a defendant to post a bond through a professional bonding company when the judge does not know at the time of setting the bond which bond company

the defendant will select. *Accord* Florida Committee on Standards of Conduct Governing Judges, Advisory Opinion 87-8 and Louisiana Committee on Judicial Ethics, Advisory Opinion 164. However, if the judge knows beyond a doubt that his uncles will become the bondsmen in a case, the judge should not preside over the initial setting of bond. Likewise, the judge should not preside over any bond forfeiture, bond modification, or other proceeding in which his uncles' bail bonding company has an interest. *Accord* Florida Advisory Opinion 87-8, Louisiana Advisory Opinion 164, and South Carolina Advisory Committee on Standards of Judicial Ethics, Advisory Opinion 31-1995.

The Commission does not see any reasonable basis to question the judge's impartiality to hear bond forfeiture proceedings involving other bail bonding companies in his jurisdiction. Thus, the Commission is of the opinion that the facts presented do not disqualify the judge to hear such matters.

REFERENCES

Alabama Advisory Opinion 00-756.

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

Florida Committee on Standards of Conduct Governing Judges, Advisory Opinion 87-8.

Louisiana Committee on Judicial Ethics, Advisory Opinion 164.

South Carolina Advisory Committee on Standards of Judicial Ethics, Advisory Opinion 31-1995.

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.