

JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 03-810

SERVICE OF A CLOSE RELATIVE AS COURT REPORTER

ISSUES

May a circuit judge retain his spouse as his official court reporter after they marry?

Answer: No, not when Ala. Code 1975 § 12-17-270 applies.

FACTS

A circuit judge has become engaged to his official court reporter. She has been his official court reporter for many years, including his entire tenure as a judge. She was the official court reporter for the judge who held the office before the present judge, and was reappointed when the present judge took office. The judge sits in a multi-county circuit.

DISCUSSION

Judicial appointments are governed not only by Canon 3B(4) and other canons, but also by provisions in the Alabama Code.

Canon 3B(4) states that a judge “should not make unnecessary appointments. He should exercise his power of appointment only on the basis of merit, avoiding nepotism and favoritism.”

Section 41-1-5, *Code of Alabama* 1975, provides the following, in pertinent part:

No officer . . . of the state . . . shall appoint any person related to him within the fourth degree of affinity or consanguinity to any job, position, or

office of profit with the state or any of its agencies. . . . Whoever violates this section is guilty of a misdemeanor and shall be punished by a fine not to exceed \$500 or by imprisonment not to exceed one year, or both. . . .

Section 12-17-270, *Code of Alabama* 1975, states the following, also in pertinent part:

Each of the judges of the circuit courts of this state shall appoint a competent person to perform the duties of official court reporter of the courts in the circuit over which said judge presides. . . . The court reporter shall not be related to the trial judge within the fourth degree of consanguinity or affinity. . . . The provisions of this section shall not apply to circuits which consist of only one county and have three or more than three judges.

Canon 2A requires judges to “respect and comply with the law.”

The Commission has previously held that Canon 3B(4) must be construed to encompass the same principles upon which § 41-1-5 is based and, therefore, that Canon 3B(4) prohibits the appointment of relatives within the prohibited degree to any position that is subordinate to that of the appointing judge. Advisory Opinion 86-250; *see also*, Advisory Opinions 76-13, 86-256 and 87-291.

In Advisory Opinion 84-200, the Commission answered an inquiry from a judge who was marrying his secretary. She had been his secretary before he became a judge and was appointed his judicial secretary when he took

office. Reasoning that the appointment was made three years before the engagement, the Commission decided that continuation of the secretary's employment after the marriage would not violate Canon 3B(4).

Following the rationale of this prior opinion, the inquiring judge's court reporter's employment after they marry would not constitute an *appointment* of a relative that is proscribed under Canon 3B(4) in light of § 41-1-5 of the Alabama Code. However, § 12-17-270 must also be considered. Section 12-17-270, by its express terms, appears to address not only initial appointments but also present relationships, stating that "[t]he court reporter shall not be related to the trial judge within the fourth degree of consanguinity or affinity." The statute, on its face, proscribes service of a judge's wife as his court reporter.

The inquiring judge points out that in Advisory Opinion 94-513, the Commission wrote that judges of a one county circuit in which there were three or more circuit judges were not prohibited from using a court reporter closely related to them on a temporary or case-by-case basis where justifiable cause to do so existed. However, this conclusion was based on the inapplicability of § 12-17-270. The statute itself excepts from its terms circuits that consist of only one county that have three or more judges. Thus, there was no statutory prohibition against the court reporter serving as the court reporter for a

judge/relative. The situation now presented is distinguishable from the one that existed in Advisory Opinion 94-513 in that the statutory prohibition does apply.

The Commission is of the opinion that the inquiring judge may not continue the employment of his spouse as his court reporter after they marry.

REFERENCES

Advisory Opinions 76-13, 84-200, 86-250, 86-256, 87-291, and 94-513.

Alabama Canons of Judicial Ethics, Canons 2A and 3B(4).

Ala. Code 1975, § 12-16-270.

Ala. Code 1975, § 41-1-5.

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, P. O. Box 303400, Montgomery, Alabama 36130-3400; tel.: (334) 242-4089; fax: (334) 353-4043; E-mail: jic@alalinc.net.