

# JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 03-814

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## DISQUALIFICATION WHEN A PARTY IS AN ATTORNEY REGULARLY APPEARING BEFORE THE JUDGE

### ISSUES

Is a judge disqualified to hear a civil action in which the defendant is an assistant district attorney assigned to his court? **Answer:** The mere fact that a defendant in a civil action is a prosecutor who regularly appears in the judge's court does not cause disqualification of the judge, but the existence of additional special factors causes disqualification under the particular facts presented.

### FACTS

An assistant district attorney assigned to a circuit judge's court recently informed him that she had been sued for collection of a student loan and that he had been assigned to the case. This attorney is not the only member of the district attorney's staff that handles criminal cases before the judge, and she also tries cases before the other judges in the circuit. The judge estimates that she handles about 85% of his criminal docket.

### DISCUSSION

Canon 3C(1) provides generally that a judge should disqualify himself in any proceeding in which his "impartiality might reasonably be questioned." 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?" *In re Sheffield*, 465 So.2d 350, 356 (Ala. 1984). The question 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 Commission has previously concluded that the mere fact that a party to a proceeding is an attorney who regularly practices before the judge does not cause disqualification of the judge. Advisory Opinions 82-136 and 98-701. Both of these opinions recognized, however, that the existence of special additional circumstances in a particular case might cause disqualification. For example, the judge would be disqualified if he or she had a personal bias or prejudice toward or against the attorney. Advisory Opinion 92-136. The judge also could be disqualified based upon a special social or other extraordinary relationship with the attorney/party, or due to the nature of the particular case or its potential impact on future working relations among court officials. Advisory Opinion 98-701.

The Commission reaffirms Advisory Opinions 82-136, 92-136 and 98-701. Thus, the issue is whether special factors exist in this particular case that create a reasonable question as to the judge's impartiality. Upon careful consideration, the Commission is of the opinion that the totality of the stated facts, including that the prosecutor brought the case

to the attention of the judge and that she handles about 85% of the judge's criminal docket, does create a reasonable question as to the judge's impartiality and, therefore, that the judge should recuse himself from the case.

### REFERENCES

Advisory Opinions 82-136, 92-136 and 98-701.

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

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

*In re Sheffield*, 465 So.2d 350 (Ala. 1984).

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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](mailto:jic@alalinc.net).