

JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 03-827

DISQUALIFICATION DUE TO ACQUAINTANCE WITH A PARTY

ISSUE

Is a judge disqualified to hear a case as a result of his acquaintance with the defendant as set forth in the Facts below? **Answer:** No.

FACTS

A circuit judge has been assigned to hear a criminal case in which the defendant is a police officer. Ten or more years ago, while the judge's brother was a police officer, the defendant was the judge's brother's partner for a period of time, and the judge knew him through his working with the judge's brother. Other than this, the only contact the judge has had with the defendant has been an occasional appearance by the defendant as a witness for another police department, or to see him while he was on patrol.

The judge has never socialized with the defendant, and he feels he can fairly judge the case.

DISCUSSION

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).

The Commission has addressed questions involving a judge's friendship or other association with a party on a number of occasions. See, e.g., Advisory Opinions 93-510, 93-511, 94-522, 95-541, 96-613, 99-729, and 01-782. "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). The acquaintance with the defendant described in the Facts does not create a reasonable question as to the judge's impartiality. Thus, it is the opinion of the Commission that the judge is not disqualified to hear the subject case.

REFERENCES

Advisory Opinions 93-510, 93-511, 94-522, 95-541, 96-613, 99-729, and 01-782.

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

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