

JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 04-839

CONFLICT INVOLVING A WORKING RELATIONSHIP WITH A PROSECUTOR'S SPOUSE

ISSUE

May a judge serve as the chair of his county's children's policy council if the spouse of the executive director of the council is the drug court assistant district attorney who handles preliminary hearings over which the judge presides? **Answer:** Yes, but he should take care not to discuss cases handled by her spouse with her.

FACTS

Pursuant to § 12-15-133, *Ala. Code* 1975, a juvenile court judge serves as chairman of his county's Children's Policy Council. The active participation of the juvenile judge as chairman of county councils has been greatly stressed as critical to the success of each council, and those councils which are most successful are those in which the county juvenile judge is an active chairman.

Councils are required by law to meet quarterly and assess the needs of children within the county. Some meet more often and have incorporated as 501(c)(3) corporations. Several have hired an executive director to oversee day-to-day operations and to pursue and apply for grants.

The judge has served as chairman of his county's council since its inception. The council has monthly meetings and has had an executive director for almost two years. The council has recently hired a new executive director. This individual is the spouse of the drug court assistant district attorney. Since he is a district judge, the juvenile court judge does not preside over felony trials. However, he does preside over preliminary hearings in drug cases two days per month which this assistant district attorney handles for the district attorney's office.

The executive director of the children's policy council is not a part of the judge's staff. She does not have an office in the courthouse. Judicial money is not used for her salary or office expenses. She is an employee of the council, not of the judge, paid with funding obtained by the council.

DISCUSSION

Canon 5B applies to civic activities in general, providing that a judge may participate in such activities if they "do not reflect adversely upon his impartiality or interfere with the performance of his judicial duties." Canon 2A likewise requires judges to conduct themselves at all times "in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

Canon 3C(1) states that a judge is disqualified to hear a case whenever "his impartiality might reasonably be questioned."

"Recusal is required under Canon 3C(1) 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). See, also, *Wallace [v. Wallace]*, 352 So.2d 1376, 1379, (Ala.Civ.App. 1977)]. Specifically, the Canon 3C(1) test 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?' Thode, *The Code of Judicial Conduct - The First Five Years in the Courts*, 1977 Utah L.Rev. 395, 402."

Matter of Sheffield, 465 So.2d 350, 355-356 (Ala. 1984).

In Advisory Opinion 88-333, the Commission decided that a judge was disqualified to hear

cases in which the State Personnel Board was a party when the judge's secretary was the spouse of the attorney for the personnel board, unless the judge's secretary took no part in the proceeding and did not discuss the matter with the judge. Under the facts presented in Advisory Opinion 88-333, the judge would occasionally hear civil cases in which his secretary's spouse was counsel for a party state agency. The Commission decided that a reasonable question as to the judge's impartiality could be avoided by completely insulating the secretary from participating in or having any contact whatsoever with such cases.

The Commission has also advised judges that they were not disqualified to hear cases due to close familial relationships between an attorney in a case and the judge's clerk/bailiff so long as the judge's employee takes no part in the proceeding and does not discuss any aspect of the proceeding with the judge. Advisory Opinions 83-190, 85-231 and 94-536. *See also*, Advisory Opinion 94-535 (where the relationship was between an attorney and the judge's court reporter) and 97-668 (where the appellate judge's senior staff attorney was the spouse of the chief assistant district attorney in a county).

In the situation now presented, the attorney's relative is not an employee of the judge, nor does she work in the courthouse. She only has a working relationship with the judge by virtue of his service as chairman of the chil-

dren's policy council, which position he holds by statutory mandate. It is the opinion of the Commission that there is no conflict with the Canons of Judicial Ethics in the judge's continued service as the chair of the children's policy council. He should, however, take care to avoid ever discussing cases in which her husband is involved with the executive director of the council.

REFERENCES

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

Advisory Opinion 83-190, 85-231, 88-333, 94-535, 94-536 and 97-668.

Alabama Canons of Judicial Ethics, Canons 2A, 3C(1) and 5B.

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.