

JUDICIAL INQUIRY COMMISSION

DATE ISSUED: MAY 6, 2004

ADVISORY OPINION 04-840

DISQUALIFICATION WHEN AN ATTORNEY IN A CASE REPRESENTS THE JUDGE IN UNRELATED LITIGATION

ISSUE

I. Does the disqualification of a judge to hear matters in which an attorney appears who is then representing the judge in an unrelated matter continue while the matter is inactive but not finally resolved? **Answer:** Yes.

II. Does such disqualification cease when the matter is resolved and representation ceases? **Answer:** Yes, absent the existence of special circumstances causing a continued reasonable question as to the judge's impartiality.

FACTS

A circuit judge has retained the services of counsel to represent him and his wife in a proceeding to obtain temporary custody of their grandchild. Due to the nature of the proceeding, the judge expects there to be long periods of inactivity followed by review. He also expects that, at some point in the future, the matter will be resolved through the return of custody to the natural parents or by permanent custody being vested in himself and his wife, at which time the representation would cease.

DISCUSSION

A judge is disqualified from a case in which a party is represented by an attorney who is currently representing the judge in unrelated litigation. This disqualification is based on the general provision in Canon 3C(1) that a judge is disqualified whenever the judge's "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). Advisory

Opinions 92-454, 96-616 and 99-731.

Such disqualification ordinarily only applies with respect to the appearance of an attorney who represents the judge, and not to other members of that attorney's firm. Absent extraordinary additional circumstances causing a reasonable question as to the judge's impartiality, disqualification does not extend to cases involving partners or associates who are not involved at all in the judge's case. Advisory Opinions 92-443, 96-616, 96-623, 99-731 and 02-795.

A judge's disqualification due to the appearance of an attorney representing him in another matter commences when that attorney is engaged to represent the judge, and the judge may take no action in the case after that point in time. Advisory Opinion 99-731; *see also*, Advisory Opinion 88-337. Ordinarily, disqualification ceases when the legal matter involving the judge concludes, or the representation otherwise ceases. However, extraordinary circumstances occasionally exist in which disqualification extends for a period after representation ceases. Advisory Opinions 92-446, 94-516, 96-590, 96-606 and 96-616.

It is the opinion of the Commission that the judge is disqualified to hear matters in which an attorney appears who is representing the judge in a child custody proceeding, until the proceeding is finally resolved or the representation otherwise ceases. After the representation ceases, the judge should examine the facts for any unusual circumstances under which his impartiality might remain reasonably questionable. Advisory Opinion 96-616. The Commission may be consulted if the judge desires advice about a particular factual situation that arises.

REFERENCES

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

Advisory Opinions 88-337, 92-443, 92-446, 92-454,

94-516, 96-590, 96-606, 96-616, 96-623, 99-731 and 02-795.

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

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.