

JUDICIAL INQUIRY COMMISSION

DATE ISSUED: MAY 9, 2005

ADVISORY OPINION 05-851

DISQUALIFICATION WHEN THE DEFENDANT IS A CLOSE RELATIVE OF THE JUDGE'S DOCTOR

ISSUE

Is a judge disqualified to hear a particular criminal case in which the defendant is the child of the judge's long time personal physician? **Answer:** Yes.

FACTS

During the defense portion of the trial on a charge of Driving Under the Influence, a district judge realized that the defendant was the son of the judge's personal physician whom the judge knows very well, having been the doctor's patient for more than twenty-five years. The defendant's father is a family practitioner who has also treated several members of the judge's family, including having been the judge's father's doctor for more than twenty-five years. The judge is also the patient of one of the defendant's uncles, who is a surgeon who has treated the judge off and on for twenty-five years, including having performed surgery on the judge within the last two years. The judge also knows the defendant's paternal aunt.

The judge began to feel uncomfortable when he realized he was trying his doctor's son. At the conclusion of the testimony, the case was taken under advisement. The relationship with the defendant's father was disclosed to the parties.

The judge feels his relationship with the defendant's father has such an appearance of closeness and confidentiality as to cast doubt on his ability to impartially judge the case on the facts. Although he believes he can judge the case impartially, he fears that he would be perceived as a judge who does favors for his close friends if he finds the defendant not guilty and, on the other hand, that his relationship with his doctor would be adversely affected if he finds the defendant guilty.

DISCUSSION

Under Canon 3C(1), 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, 355-356 (Ala. 1984). The reasonable person/appearance of impropriety test stated in Canon 3C(1) sometimes disqualifies judges who have no actual bias. *Id.*, at 357.

Having carefully considered the facts presented, the Commission finds that there are sufficient circumstances to create a reasonable question as to the judge's impartiality. See Advisory Opinions 99-740 and 02-794. Thus, the Commission is of the opinion that the judge is disqualified in the subject case.

REFERENCES

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

Advisory Opinions 99-740 and 02-794.

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

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.