

JUDICIAL INQUIRY COMMISSION

DATE ISSUED: JUNE 10, 2005

ADVISORY OPINION 05-852

DISQUALIFICATION WHEN A RELATIVE OF THE JUDGE WAS A SECRETARY WITH A LAW FIRM INVOLVED IN A CASE

ISSUES

Is a judge disqualified to hear a case in which a party is represented by a law firm due to the fact that his spouse was recently employed as a secretary at that firm? **Answer:** Where the judge's spouse is no longer employed by the firm and never had any involvement in the case, the Commission is of the opinion that the judge is not disqualified.

FACTS

A circuit judge's spouse was previously employed as a legal secretary by a law firm that represents the plaintiff in a case assigned to the judge. She left that employment about two months ago, after the judge was elected to the bench. A motion for recusal has been filed that includes an allegation that it is the defendant's understanding that the judge's spouse had been involved in various aspects of the case. However, she states that she was not involved in the case while she was employed as a legal secretary.

DISCUSSION

The Commission has issued a number of opinions concerning whether a judge is disqualified from hearing cases due to the employment of a close relative by a law firm involved in the case. The Commission has indicated in those opinions that the mere fact of such employment of a close relative does not cause disqualification, but that the judge may be disqualified depending upon the particular circumstances. See, *e.g.*, Advisory Opinions 81-125, 82-134 and 85-239. The Commission has stated that, in determining whether disqualification is required, a judge should assess his relationship with the employee and the employee's relationship to the proceeding. Advisory Opinions 81-125, 82-

134, 92-444 and 96-608.

In Advisory Opinion 91-418, the Commission concluded that the mere fact of a spousal relationship between the judge and a secretary to a firm representing a party was sufficient to cause disqualification of the judge under the general provision in Canon 3C(1) requiring disqualification whenever the judge's "impartiality might reasonably be questioned." However, the facts in that case involved a possibility that the spouse might share in a Christmas bonus that reflected the relative financial success of the firm. See Advisory Opinions 84-206, 92-444 and 96-608 (disqualification would be required if the judge's child's employment with a firm were such that he had an interest that could be substantially affected by the judge's ruling).

In Advisory Opinion 80-66, the Commission concluded that the employment of the judge's spouse as a bookkeeper or accountant for a law firm, which employment would not involve any direct assistance with any legal matters which might come before the judge, would not cause disqualification of the judge. Other opinions by the Commission have also identified the degree of involvement (or non involvement) of the relative/employee in a particular proceeding as highly relevant to whether disqualification results from the relative's employment by a law firm representing a party before a judge. See Advisory Opinions 85-239, 92-444, 96-608 and 01-785.

The foregoing opinions all involved current employment relationships. In the situation presented, the judge's spouse is no longer employed with the firm. The Commission has held on a number of occasions that, unless there are extraordinary factors that would require continued disqualification, a judge is not disqualified to hear an action after a circumstance causing disqualification has ceased to exist. See, Advisory Opinions 92-454, 94-516 and 96-605.

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).

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

A ruling on a recusal motion is a legal matter for the judge, not the Commission, to make, and whether a judge is disqualified depends on all of the factual circumstances involved. However, the Commission is of the opinion that the judge’s impartiality is not reasonably questionable where the judge’s spouse is no longer employed as a legal secretary for a firm representing a party, under the assumption that she never had any involvement in the subject case. Under these facts, the Commission believes that the Canons of Judicial Ethics do not require disqualification of the judge.

REFERENCES

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

Advisory Opinions 80-66, 81-125, 82-134, 84-206, 85-239, 91-418, 92-444, 92-454, 94-516, 96-605, 96-608 and 01-785.

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