

JUDICIAL INQUIRY COMMISSION

DATE ISSUED: January 6, 2006

ADVISORY OPINION 06-859

DISQUALIFICATION - JUDGE'S WIFE
EMPLOYED BY SAME SCHOOL BOARD
AS DEFENDANT

ISSUE

Is a judge disqualified to hear a criminal case in which the defendant is an employee of the same school district as the judge's wife? **Answer:** No, the fact that a defendant in a criminal case is employed by the same employer as the judge's spouse standing alone does not cause the judge's disqualification.

FACTS

A judge has been assigned to hear a criminal case involving a sexual assault upon a student at a local highschool. The defendant was employed by the local school board as a coach. The judge's spouse is employed by the same school board as a principal at another school and as the Coordinator for Title IV programs. The defendant has never met, nor does he know the judge's wife. The school board has over 1,000 employees. The Judge's spouse had no supervisory authority over the defendant nor does the defendant have any such authority over the judge's spouse. The school board is not a party to the litigation.

DISCUSSION

Disqualification is governed generally by Canon 3C of the Alabama Canons of Judicial Ethics. That Canon provides in pertinent part that

- (1) A judge should disqualify himself in a proceeding in which his disqualification is required by law or in which his

impartiality might reasonably be questioned including but not limited to circumstances where:

(a) He has a personal bias or prejudice concerning a party, or personal knowledge or disputed evidentiary facts concerning the proceeding;

(b) He served as a lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer in the matter, or the judge or such lawyer has been a material witness concerning it.

(c) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in this household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

In Advisory Opinion 04-841, the Commission considered a situation where the judge's relative was a substitute teacher for a local board and some of the members of the board were actually parties to the lawsuit in which the board was interested. The Commission finds that opinion to be instructive. There, the Commission found that the mere fact that the judge's relative is employed by a party to the

proceeding is not sufficient to cause the judge's disqualification. Additional factors must exist tending to show a personal bias or prejudice on the part of the judge. Some of those factors are listed in subsections (a), (b), and (c) of Canon 3C. In each situation, there is a direct connection between the bias factor and the litigation. Under the instant facts, no such direct factor exists. Here, the judge's wife is not a party to the proceeding, nor is the wife's employer a party. Neither the judge nor his wife has any interest that will be affected by the outcome of the criminal case.

REFERENCES

Alabama Canons of Judicial Ethics, Canon 3C

Advisory Opinion 04-481

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.