

Judicial Inquiry Commission

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MONTGOMERY, ALABAMA 36104

December 21, 1982

The Judicial Inquiry Commission has received your request for an opinion concerning the following seven questions under the Canons of Judicial Ethics:

- (1) Should I recuse myself from a civil case in which (my son-in-law) is the attorney for one of the litigants?
- (2) If the answer to (the first question) is in the affirmative, does this apply in all civil cases in which he may be specifically involved including:
 - (A) "uncontested" matters such as divorce or pro ami proceedings;
 - (B) emergency matters such as a temporary restraining order where no other judge is available?
- (3) Should I disqualify myself from criminal matters to which he has been assigned to prosecute for the State?
- (4) If the answer to (the third question) is in the affirmative, does this apply to all criminal matters, including those in which a judge takes no prejudicial action, such as arraignments, etc.?
- (5) Would I be required to disqualify myself where one of his law partners or associates in the firm represented a litigant in a civil matter?
- (6) If I would be required to disqualify myself under any of the above situations, can such disqualifications be avoided by my son-in-law or his partners obtaining a waiver from the parties involved?
- (7) If (a waiver is possible) who would be required to execute the waiver and can one be obtained from each area law firm generally or should it be only on a case-by-case basis?

It is the opinion of the Commission that under the facts given in your first, second, third, fourth and fifth questions you are disqualified from hearing the proceedings. This Commission has previously ruled, in Advisory Opinions 80-88 through 80-91, that, under the Canons of Judicial Ethics, Canon 3C, a judge is disqualified from hearing any proceedings where an attorney for one of the parties is related to the judge within the fourth degree. The Commission has further ruled in Advisory Opinion 80-76, that a judge is disqualified where an attorney for one of the parties is a partner or associate of an attorney, who is related to the judge within the fourth degree.

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As to your sixth and seventh questions, disqualification may be remitted under the provisions of Canons of Judicial Ethics, Canon 3D. It is the opinion of the Commission that such a remittal of disqualification must be on a case-by-case basis since remittal must be agreed to by the parties to the proceeding.

Very truly yours,

JUDICIAL INQUIRY COMMISSION

P. S. Your second advisory opinion request of November 29, 1982 concerning disqualification should be forthcoming following the Commission's January 28, 1983 meeting.