

Judicial Inquiry Commission

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March 3, 1986

The Judicial Inquiry Commission has considered your request for an opinion concerning whether, under the Alabama Canons of Judicial Ethics, a Judge is disqualified from sitting in a proceeding in which one of the parties is represented by the judge’s first cousin’s law firm or in which an expert witness is the first cousin of the judge’s spouse. If disqualification is required, you ask whether it may be remitted.

It is the opinion of the Commission that disqualification is required in each of the instances described. This disqualification may be remitted under the provisions of Canon 3D. This opinion is based on Canon 3C(l) and 3D of the Alabama Canons of Judicial Ethics and on previous opinions of the Commission. Canon 3C(l) provides in pertinent part as follows:

“(1) A judge should disqualify himself in a proceeding in which his disqualification is required by law or his impartiality might reasonably be questioned, including but not limited to instances where:

* * * *

(d) He or his spouse, or a person within the fourth degree of relationship to either of them, or the spouse of such person:

* * * *

(ii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iii) Is to the judge’s knowledge likely to be a material witness in the proceeding;”

We have stated in numerous previous opinions that under these provisions a judge is disqualified from sitting in a proceeding where one of the parties is represented by an attorney related to the judge within the prohibited degree. The same disqualification applies to all members of the attorney’s law firm. See, e.g., Opinions No. 83-169; 80-69; and 80-68. In each instance we have further stated that this disqualification may be remitted under Canon 3D.

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In a proceeding in which the first cousin of the judge's spouse is to appear as an expert witness, the judge is disqualified under the specific provisions of Canon 3C(l)(d)(iii). Disqualification under Canon 3C(l)(d) may be remitted under Canon 3D.

Sincerely,

JUDICIAL INQUIRY COMMISSION