

Judicial Inquiry Commission

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June 29, 1987

The Judicial Inquiry Commission has considered your request for an opinion concerning whether under the Alabama Canons of Judicial Ethics a person may continue to sit as a municipal court judge under certain circumstances. Under the facts presented, the judge is one of four municipal court judges in an Alabama municipality. The judge's wife has recently become an assistant city attorney for that municipality. Her office prosecutes cases before the municipal court. The judge's wife will not appear before her husband in any cases but other members of the city attorney's office will appear. Based on those facts, you ask whether the judge may continue to serve.

It is the prerogative of the Alabama Court of the Judiciary to determine whether a judge may continue in office if he has violated the Alabama Canons of Judicial Ethics. This Commission is authorized to issue advisory opinions concerning the application of the Canons of Judicial Ethics. Therefore, this advisory opinion is addressed to whether a violation of the Canons of Judicial Ethics exists under the facts presented.

It is the opinion of the Commission that under the facts presented there is no violation of the Canons. The provisions of the Canons most applicable in this instance are those including disqualification. Those provisions are found in Canon 3C of the Alabama Canons of Judicial Ethics. Canon 3C provides that a judge is disqualified from sitting in any proceeding in which he or his spouse is related within the fourth degree to an attorney appearing in the proceeding or has a financial interest in the outcome of a proceeding.

This Commission has previously ruled that this provision does not require disqualification of a judge in all cases involving members of a district attorney's staff where the judge's relative is an assistant district attorney. The judge's only disqualification is in those cases in which his relative participates. See advisory opinions 80-89, 81-101, 83-171 and 86-277.

It is the opinion of the Commission that the reasoning of these advisory opinions is applicable in the instant case.

Sincerely,

JUDICIAL INQUIRY COMMISSION