

## Judicial Inquiry Commission

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The Judicial Inquiry Commission has considered your request for an opinion concerning whether, under the Alabama Canons of Judicial Ethics, a judge is required to disqualify himself from sitting in certain proceedings. Under the facts set out in the opinion, the judge's secretary (state classification Executive Assistant III) is the wife of the attorney for the State Personnel Board. The secretary would not in any manner be involved in any case in which the State Personnel Board is a party. The judge now requests the opinion of the Commission on the question of whether the judge is required to disqualify himself in all proceedings in which the State Personnel Board is a party. If the judge is not disqualified, he asks whether he should recuse himself.

It is the opinion of the Commission that the judge is not required to disqualify himself under the above described circumstances. Whether the judge should recuse himself even though disqualification is not required is a matter of personal judgment to be exercised by the judge on a case by case basis. The opinion of the Commission is based on the provisions of Canon 3 of the Alabama Canons of Judicial Ethics.

Canon 3C 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 ...”

While the Commission has not had the opportunity to consider whether this provision requires the judge's disqualification where a relative of the judge's secretary or the relative's law firm represents a party to the proceeding, the Commission has twice considered the issue as it relates to relatives of the judge's bailiff. Such was the issue presented in our previous opinions 83-190 and 85-231. In those opinions, the Commission found that the judge's employee stood in the same position as would the judge himself and that the judge would be disqualified in any proceeding in which the employee's lawyer relative or the relative law firm represented a party. However, an exception is made where the judge's employee takes no part in the proceeding. In that instance, the judge is not required to disqualify himself.

As to recusal, this is a matter left to the judge's discretion.