

Judicial Inquiry Commission

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September 30, 1988

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 a party is represented by a member of a law firm in which the judge's uncle holds the position of senior partner. You request that the Commission modify or overrule its previous opinions holding that the existence of such a relationship causes the judge to be disqualified. To the extent set out below, the Commission grants your request and hereby overrules and modifies its prior opinions as follows:

It is the opinion of the Commission that the mere existence of the circumstances described above does not of itself cause the judge's disqualification. This opinion is based upon the provisions of Canon 3C(1) and 3C(1)(d)(ii) and the commentary thereto as set out below:

CANON 3

C. Disqualification:

- (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 a person:

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COMMENTARY

The fact that a lawyer in a proceeding is affiliated with a law firm with which a lawyer-relative of the judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that "his impartiality might be reasonably questioned" under Canon 3C(I), or that the lawyer-relative is known by the judge to have an interest in the law firm that could be "substantially affected by the outcome of the proceedings" under Canon 3C (1)(d)(ii) may require his disqualification.

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

It is clear from the commentary that the mere fact that a lawyer representing a party to a proceeding “is affiliated with a law firm with which a lawyer-relative is affiliated”, does not cause the judge’s disqualification. It is thus the opinion of the Commission that the mere existence of the uncle’s partnership interest is not a disqualifying factor. However, disqualification would occur if other circumstances exist under which the judge’s “impartiality might reasonably be questioned” or the lawyer-relative may be known by the judge to have an interest in the law firm that could be “substantially affected by the outcome of the proceedings.” Under these provisions of Canon 3C(l) and 3C(l)(d)(ii) a judge must examine the facts in each case where a lawyer-relative’s law firm is representing a party and must determine whether a factor exists under which his “impartiality might reasonably be questioned” or whether the lawyer- relative has an interest which could be “substantially affected by the outcome of the proceeding.” If either such factor exists the judge must disqualify himself. These provisions place a heavy burden on the judge in each case. In considering these issues, the judge must be ever cognizant of the provisions of Canon 1 setting out the object of the Canons.

CANON 1

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

To the extent they are in conflict with this opinion, the Commission hereby overrules or modifies previous opinions including 79-64, 80-76, 80-88, 80-96, 81-101, 82-169, 85-245, 86-258, 86-263, and 86-268.

Sincerely,

JUDICIAL INQUIRY COMMISSION