

Judicial Inquiry Commission

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December 21, 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 certain proceedings involving the Alabama Department of Human Resources where the judge's wife recently has become employed. Under these circumstances the specific questions are whether the judge is disqualified in the following instances:

- (a) in all cases wherein the Department of Human Resources is a party;
- (b) in all cases wherein the Department of Human Resources is involved (though not a party to the suit);
- (c) in only those cases in which the spouse is involved or has been personally involved as a caseworker for the Department.

It is the opinion of the Commission that under the Alabama Canons of Judicial Ethics a judge is disqualified from sitting in only those cases in which his wife personally has been involved as an employee of the Department; is likely to be called as a material witness; or is likely to receive some known direct or indirect benefit, i.e., a class salary or pay raise dispute. This opinion is based primarily on Canon 3C of the Alabama Canons of Judicial Ethics.

Canon 3C provides in pertinent part that:

- (1) A judge should disqualify himself in a proceeding in which his ... impartiality might reasonably be questioned, including but not limited to instances where:
 - (c) He knows that ... his spouse ... has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;
 - (d) He or his spouse ...

* * * *

- (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;

This Canon was considered by the Commission in Advisory Opinion 86-286. There, the Commission advised that this Canon does not require disqualification in all cases concerning the Sheriff's Department where the judge's wife is employed by that Department. The Commission further advised that for disqualification to occur a more direct involvement or interest would be necessary. The Commission hereby reconfirms that opinion.

In conclusion, employment of a judge's spouse by a governmental agency does not disqualify the judge from sitting in all cases involving that agency. A more direct involvement, a direct interest, or a personal knowledge would be required on the part of the judge or his spouse for disqualification to occur.

Sincerely,

JUDICIAL INQUIRY COMMISSION