

## 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 disqualified from sitting in certain proceedings. Two sets of circumstances are presented. First, whether the judge is disqualified from hearing a child custody case wherein one of the parties is a third cousin to the husband of the judge's secretary. Second, is the judge disqualified from sitting in a child custody hearing in which one of the parties was a defendant in an unrelated child custody hearing where the judge represented that party's then spouse. The judge has never represented either of the parties involved in the present child custody matter.

It is the opinion of the Commission that no disqualification is required in the first instance. However, Canon 3C of the Alabama Canons of Judicial Ethics requires disqualification in the second instance. This opinion is based on Canon 3C of the Alabama Canons of Judicial Ethics. Canon 3C governs the disqualification of judges. That Canon provides in pertinent part:

- (1) A judge should disqualify himself in a proceeding in which his disqualification is required by law or his impartiality might reasonably be questioned ...

Canon 3C(l)(d) further requires disqualification when the judge or his spouse is related to a party within the fourth degree.

While Canon 3C(l)(d) is not specifically applicable to the question presented here concerning the judge's secretary's husband's relative, that canon does lend guidance in setting out the fourth degree of relationship as being that degree which requires automatic disqualification. Here, the party is related neither to the judge nor his wife nor the spouse of such person. Further, the relationship is the eighth degree, far from that which would require automatic disqualification if the party were so related. Therefore, it is the opinion of the Commission that the relationship of a party within the eighth degree to the spouse of the judge's secretary does not of itself require the judge's disqualification.

The second question presents more problems. The judge now has before him in a child custody proceeding a party with whom the judge had an adversarial relationship as an attorney in a previous unrelated child custody dispute. The Commission is of the opinion that under these particular circumstances a person of ordinary prudence might reasonably question the judge's impartiality. In this instance, the Commission does not consider a question of actual bias or prejudice but the reasonable appearance of bias whether or not such actually exists.