

## 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, whether the judge is 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 some ten years prior to the present proceeding. The judge has never represented either of the parties involved in the present child custody matter. Upon first meeting the parties in the present proceeding, the judge thought that he recognized the prior defendant. The judge and the party discussed the matter, and neither the defendant nor his attorney raised any objection to the judge's proceeding with the present case.

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 a more careful consideration of disqualification in the second instance. This consideration 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 circumstances a person of ordinary prudence might reasonably question the judge's impartiality. However, factors may exist to alleviate the appearance of bias or prejudice. Here, a number of years have passed since the original adversarial relationship was dissolved. The parties and their attorneys have considered the matter and agreed that there exists no objection to the judge's hearing the case. It would therefore appear to the Commission that, if the consent of the parties and their attorneys is reflected in writing in the records of the court as set out in Canon 3D, this factor along with the passage of time since the adversarial relationship existed would alleviate any disqualification. The judge's impartiality might no longer reasonably be questioned. 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.

Very truly yours,

JUDICIAL INQUIRY COMMISSION