

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. The judge is a circuit judge and the judge's spouse is a full-time city attorney. The spouse is responsible for the management of the city attorney's office and the four or five assistant city attorneys. The spouse, as city attorney, is an employee of the city. The question presented is whether the judge is disqualified from sitting in a proceeding in which an assistant city attorney either defends the city in a civil matter or prosecutes on behalf of the city in a criminal matter.

It is the opinion of the Commission that under the facts presented the judge in question is not disqualified automatically from sitting in cases in which an assistant city attorney appears as counsel of record for the city. The judge could, however, be disqualified if certain factors exist. It is incumbent upon the judge to make the necessary determination at the outset of each proceeding.

This opinion is governed by Canon 3C of the Alabama Canons of Judicial Ethics. 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, including but not limited to instances where:

* * * *

- (c) He knows that he, individually or as a fiduciary, or 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 ...
 - (i) Is named a party to the proceeding, or an officer, director, or trustee of a party.
 - (ii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;”

Those cited portions of Canon 3C are particularly applicable to the issue at hand. If the city attorney participates in the proceeding either directly as attorney of record, or

participates indirectly by actively directing the actions of the city attorney's office in a particular proceeding, then the Commission believes that the judge's impartiality might reasonably be questioned under these provisions. Therefore, at the outset of each proceeding, the judge should ascertain whether the judge's spouse is a participant in either capacity. If the spouse is a participant, the judge is disqualified from sitting.

By this opinions the Commission does not intend to indicate that a judge is disqualified from sitting in municipal cases merely because an assistant city attorney representing the city follows established city attorney office procedures or generally established office guidelines. The participation of the judge's spouse must be more direct and involved to require the judge's disqualification.

Very truly yours,

JUDICIAL INQUIRY COMMISSION