

Judicial Inquiry Commission

800 SOUTH MCDONOUGH STREET
SUITE 201
MONTGOMERY, ALABAMA 36104

November 19, 1990

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 proceedings involving two different law firms, one in which a lawyer-relative of the judge is a partner, one in which a lawyer-relative of the judge's spouse is a partner. As to Law Firm 1, a lawyer-relative of the judge's spouse is a partner. Except upon a very limited basis, this lawyer has no pecuniary interest in cases handled by his partners although one of his partners has a pecuniary interest in most of the lawyer-relative's cases. In Law Firm 2, the judge's lawyer-relative is a partner. In that law firm all of the partners share in all of the profits of the firm. Both lawyer-relatives fall within the fourth degree of relationship.

It is the opinion of the Commission that the judge is disqualified from sitting in any case in which the lawyer-relative of the judge or the judge's spouse represents a party or has any other interest which could be substantially affected by the outcome of the proceeding. This disqualifying interest includes a pecuniary interest in the partnership which may be substantially affected by the outcome of the proceeding. This opinion is based upon Canons 1 and 3 of the Alabama Canons of Judicial Ethics and prior opinions of the Commission.

Canon 3C(l) provides in pertinent part as follows:

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:

* * * *

COMMENTARY

The fact that a lawyer in a proceeding is affiliated with a law firm with which a lawyer-relative of the judge is 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(I)(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;

In Guthery v. Guthery, 409 So.2d 844 at 846 (Ala. Civ. App. 1981), the Alabama Court of Civil Appeals found that under Canon 3C(I)(d), a judge is disqualified from sitting in any proceeding in which he is related to an attorney within the fourth degree. That Canon by its own terms applies whether the attorney is related to the judge or the judge’s spouse. The Commission had previously in Advisory Opinion 76-64, extended that disqualification to any proceeding in which the law firm of the judge’s lawyer-relative represents a party. That opinion and subsequent opinions were modified by the Commission in Advisory Opinion 88-338. There the Commission stated that under Canon 3C(I) and 3C(I)(d)(ii):

“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(I) and 3C(I)(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.

Considering these requirements in this instance due to the law firm's financial arrangements, the judge is disqualified in sitting in any proceeding in which Law Firm 2 represents a party. In proceedings in which a member of Law Firm 1 represents a party, the judge is automatically disqualified in only those proceedings in which the lawyer-relative of the judge is known by the judge to have an interest which could be substantially affected by the outcome of the proceedings. In all other cases, the judge must examine each case and make an independent determination as to whether disqualification occurs. In so doing, the judge must be ever mindful of the heavy burden placed upon him in Canon 1.

Sincerely,