

Judicial Inquiry Commission

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MONTGOMERY, ALABAMA 36104

April 30, 1991

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 appeals from municipal court in which the judge's father and former law partner sat as the municipal court judge.

It is the opinion of the Commission that under the provisions of Canon 3C as previously applied by the Commission in Advisory Opinion 90-411 that a judge is disqualified from hearing appeals in cases originally heard by his father sitting without a jury.

Canon 3C 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, ... or his spouse, ... has ... any... interest that could be substantially affected by the outcome of the proceeding;

In Guthery v Guthery, 409 So.2d 844, 846, (Ala. Civ. App.1981), the Alabama Court of Civil Appeals found that under this Canon, a judge is disqualified from sitting in any proceeding in which he is related to an attorney within the fourth degree. The opinion of the Court of Civil Appeals was followed by the Commission in Advisory Opinion 90-411 applying Canon 3C to matters in which an attorney relative of the judge represents a party to the proceedings. A logical extension of that opinion applies the applicable Canon to matters in which the judge's father previously decided the matter as judge in a municipal court and that decision is on appeal to the circuit court in which the son of the municipal court judge sits as circuit judge. The municipal judge's judicial reputation is an interest which could be substantially affected by the decisions on appeal in matters which he heard.

Sincerely,

JUDICIAL INQUIRY COMMISSION