

Judicial Inquiry Commission

800 SOUTH MCDONOUGH STREET
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MONTGOMERY, ALABAMA 36104

June 4, 1991

By letter dated April 22, 1991, you request an advisory opinion from the Judicial Inquiry Commission on whether your recusal is required under the following circumstances:

“My brother,..., is an attorney with the firm of _____. [His] primary office is located in Birmingham, Alabama, and his practice is primarily related to the tax law field. The firm is, of course, one of the largest, if not the largest, in the State of Alabama. Where a lawyer from that firm is involved in proceedings before me, but in which my brother has no direct involvement, am I disqualified from adjudicating in such proceedings. If I am so disqualified, can such disqualification be remitted by agreement of the parties?”

Pursuant to Advisory Opinion 88-338 interpreting the provisions of Canon 3C(l) and 3C(l)(d)(ii), Alabama Canons of Judicial Ethics, it is the opinion of the Commission that you are not automatically disqualified under the above facts. The mere fact that a lawyer who represents a party to a proceeding is a member of the same law firm in which the judge's brother is a member does not in and of itself cause the judge's disqualification. See also Advisory Opinion 88-346.

However, be advised that:

“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(l) and 3C(l)(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.”

Advisory Opinion 88-338.

Sincerely,

JUDICIAL INQUIRY COMMISSION