

## Judicial Inquiry Commission

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This is in response to your request for an advisory opinion from the Judicial Inquiry Commission upon the following matter.

The Judicial Inquiry Commission is conducting an investigation into allegations of unethical conduct which have been made against you. As part of that investigation, you appeared before the Commission and were represented by Attorney A who is one partner of a law firm composed of four members. Your question is whether you must recuse yourself in any case in which that attorney or any member of that law firm represents a party in a case over which you preside.

It is the opinion of this Commission that under the particular facts presented by your present situation you are disqualified in any case in which either Attorney A or any member of the law firm of which he is a member represents a party.

The provisions of Canon 3C (1) prohibit a judge from sitting in any proceeding in which an attorney for one of the parties represents the judge in an unrelated pending matter. See Advisory Opinions 88-337, 88-336, 87-313, 82-168, 80-78, 80-74, 78-53. Under that Canon, you are disqualified in any case in which Attorney A represents a party.

Ordinarily, a judge's disqualification regarding one member of a law firm does not extend to other members of the firm. Advisory Opinion 88-337. "The mere fact that a judge has retained an attorney's law partner to represent the judge or a member of the judge's family in a single case would not disqualify the judge, under Canon 3C, from sitting in a different case where the attorney represents one of the parties." Advisory Opinion 78-53.

However, there are additional facts present here which place your situation outside of the general rule. Those additional facts are as follows: The particular law firm involved is composed of Attorneys A and B and two other attorneys. You retained Attorney B to represent your personal and financial interests in connection with the criminal prosecution of your former secretary which involved the theft of personal funds. See Advisory Opinion 91-437, issued to you December 16, 1991.

Although your former secretary pleaded guilty and has been convicted and sentenced, one of the areas this Commission is presently investigating involves your conduct in connection with that plea agreement. When you appeared before the Commission in December of 1991, you were represented by Attorney A and indicated that you acted

upon the advice of Attorney B in connection with that plea agreement. Consequently, because your conduct is still under investigation, you must recuse yourself in any case in which Attorney B represents a party even though the original cause of that disqualification - Attorney B's representation of you in the criminal prosecution of your former secretary - apparently no longer exists.

Your conduct in connection with your former secretary's guilty plea is a subject of the Commission's investigation. Attorney B is a potential witness in that investigation, and Attorney A is representing you before the Commission. Consequently, both Attorney A and Attorney B, two of the firm's four members, are intimately connected with the Commission's investigation of your alleged unethical conduct. Both of these attorneys represent you on the basis of your personal and not your official conduct.

Under Canon 3C (1), "A judge should disqualify himself in a proceeding in which . . . his impartiality might reasonably be questioned." The "Canon 3C (1) recusal test" is: "Would a person of ordinary prudence in the judge's position knowing all of the facts known to the judge find that there is a reasonable basis for questioning the judge's impartiality?" In re Sheffield, 465 So.2d 350, 356 (Ala. 1984). Under these particular facts, it is the opinion of this commission that a reasonable person would have cause to question your impartiality in any case in which a party is represented by either attorney A or B, or any other member of the firm. Under Canon 2, a judge must avoid even the appearance of impropriety. Here, a reasonable person has cause to believe that the particular law firm is "the judge's firm." See also Ex parte America's First Credit Union, 519 So.2d 1325 (Ala. 1988), where the Alabama Supreme Court, in interpreting Disciplinary Rule 5-105(D), Code of Professional Responsibility, held that the determination of whether vicarious disqualification of a law firm is required as a result of the disqualification of a lawyer employed by the firm is subject to the "common sense" approach.

Your disqualification may not be remitted under the provisions of Canon 3D. Your disqualification to preside over any case in which a party is represented by any member of the law firm will cease upon the official resolution of the pending charges of unethical conduct.

No portion of this opinion should be interpreted as in any manner impugning or challenging the integrity or professionalism of either the attorneys or the law firm involved.

Respectfully,