

## Judicial Inquiry Commission

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This is in response to your request for an advisory opinion from the Judicial Inquiry Commission. Your question is whether you are disqualified from presiding over a criminal trial under the following circumstances:

Your brother is a member of a law firm. Another member of that same firm is a special assistant attorney general who participated in a grand jury investigation of a defendant whose case you have been assigned. The assistant's involvement was limited to advising the Attorney General and his staff in connection with technical legal issues. The assistant has no post-indictment involvement in the case and does not anticipate any future involvement.

It is the opinion of this Commission that these facts do not furnish a ground for your disqualification. A judge is not disqualified from presiding over a criminal case merely because the judge's brother is an assistant district attorney where the brother has not participated in the investigation or prosecution of the defendant. Advisory Opinion 88-346. See also Advisory Opinions 87-303, 86-277, 83-171, 80-101, 80-90, 80-89 (involving the judge's son). "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." Advisory Opinion 91-426. See also Advisory Opinions 88-388, 88-346, 84-214.

Consequently, the mere fact that a special assistant attorney general who was involved in the investigation and prosecution prior to indictment of a defendant is a member of the same legal firm as the judge's brother does not constitute a ground for disqualification where the judge's brother has not been involved in any way with the prosecution of the defendant.

This advisory opinion has been approved and adopted by the Judicial Inquiry Commission and is the opinion of this Commission.