

Judicial Inquiry Commission

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February 26, 1993

This is in response to your request for an advisory opinion from the Judicial Inquiry Commission. Your question is:

Please advise under Canon 3C(l)(d) whether a judge is disqualified from sitting in any proceeding where a city is prosecuting a criminal case or is a civil party, where the judge's relative within the prohibited degree is a city councilman (mayor or alderman) at the time the criminal prosecution began in city court, the crime occurred which is the basis of the prosecution, the civil suit was filed, or the cause of action arose upon which the civil suit is based, but such councilman is no longer on the council at the time the prosecution or suit comes to trial in the circuit court.

As you note, in Advisory Opinion 88-342, this Commission decided that a judge is disqualified from sitting in any civil or criminal proceeding in which the city is a party where the judge's brother-in-law is a councilman for that same city.

Canon 3C(l)(d), Alabama Canons of Judicial Ethics provides:

"(l) 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:

(1) Is named a party to the proceeding, or an officer, director, or trustee of a party; . . ."

In such a case as this, it is the relationship between the judge, the relative, and the party which causes the judge's disqualification. If the relative no longer has a disqualifying relationship with the city, the basis for the judge's disqualification has been removed, and the judge is no longer disqualified under Canon 3C(l)(d)(i).

However, even though the judge's relative is no longer a council member, disqualification may still be necessary if there exist other circumstances under which the judge's "impartiality might reasonably be questioned" or where disqualification would be necessary in order to avoid the appearance of impropriety. Canons 2, 3C(l). In such circumstances, the burden is on the judge to uphold the high standards of the Canons of Judicial Ethics and comply with the stated objective of Canon 1.

Therefore, it is the opinion of this Commission that a judge is not disqualified from presiding over a civil or criminal case in which the city is a party merely because the judge's relative within the fourth degree of relationship was a member of the city council at the time the basis for the civil or criminal case occurred where the relative was not a councilman at the time the judge became involved in the case.

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