

Judicial Inquiry Commission

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

The commentary following Canon 3C(l)(d)(i) states:

“The fact that a lawyer in a proceeding is affiliated with a law firm with which a lawyer-relative of the judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that ‘his impartiality might be reasonably questioned’ under Canon 3C(l), or that the lawyer-relative is known by the judge to have an interest in the law firm that could be ‘substantially affected by the outcome of the proceedings’ under Canon 3C(l)(d)(ii) may require his disqualification.” (Emphasis added).

Your question is what factors, other than the fact of the relationship, should a judge consider in determining whether such “appropriate circumstances” exist. In particular, the Commission interprets your request essentially as one seeking a determination of the judge’s responsibility in determining the existence of these “appropriate circumstances” referred to above and the “other factors” referred to in Advisory Opinions 88-338 and 93-491.

It is the opinion of this Commission that in any case in which a judge presides over a case in which a lawyer representing a party is affiliated with a law firm with which a lawyer-relative is affiliated, the judge should take the following action:

1. In order to avoid the appearance of impropriety and in order to maintain the manifestation of impartiality, the judge should disclose the existence of the relationship to the parties and their attorneys even though the mere fact of the relationship is not a basis for disqualification. The rule is that “it is the judge’s obligation to disclose all possibly disqualifying facts.” J. Shaman, S. Lubet, J. Alfani, Judicial Conduct and Ethics § 5.26 at 146 (1990).
2. The judge must then determine whether there exist any factors, other than the relationship, which, in conjunction with the relationship, would cause the judge’s impartiality to be reasonably questioned. If so, disqualification is required under Canon 3C(l). This disqualification cannot be waived.

A judge should consider any and all factors in determining whether a person of ordinary prudence in the judge's position knowing all of the facts known to the judge would find that there is a reasonable basis for questioning the judge's impartiality. "[T]he Canon 3C(l) recusal test is: 'Would a person of ordinary prudence in the judge's position knowing all 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).

The judge is accountable only for those "other factors" of which the judge has personal knowledge or of which he should have known. The judge need not initiate investigation into the matter unless the judge has reason to believe that there might be reason to cause his or her impartiality to be reasonably questioned. By disclosing the existence of the relationship as required by #1, the judge gives the parties and their attorneys the opportunity to supply additional information in this regard.

As mentioned in your request, other factors which should be considered, if known, are: whether the lawyer-relative would receive a commission, contingency, or bonus from the instant case, or all of the firm's cases for a time period; whether the relative would receive a salary increase when the firm reaches a certain dollar amount in a given time period; the degree of kinship between the judge and the relative; the number of cases the firm has before the judge; and any other connections, dealings or relationships of the judge to other members of the relative's law firm. While all of these factors are relevant and should be considered, their existence does not necessarily constitute a reasonable basis for questioning the judge's impartiality. That determination must be made on a case-by-case basis depending upon the totality of each case.

3. Finally, the judge should determine whether the lawyer-relative has an interest in the law firm that could be 'substantially affected by the outcome of the proceedings' under Canon 3C(l)(d)(ii). If the lawyer-relative does have such an interest, the judge is disqualified. However, that disqualification may be remitted under Canon 3D.

In this regard, as with #2, the judge is accountable only for those facts of which the judge has personal knowledge or of which he should have known. Under the Canon 3C(2), a judge is required to make a reasonable effort to inform himself about the personal financial interests only of the judge, the judge's spouse, and the judge's minor children residing in the judge's household. That obligation does not extend to the judge's

relatives. A judge need not initiate investigation to determine whether or not his relative has an interest in the law firm that could be substantially affected by the outcome of the proceedings unless the judge has reason to believe that such an interest exists.

In response to your request for a “practical method of resolving these questions” the Commission can only offer these general principles. There are no simple answers to your questions. There are no precise and rigid formulas which may be applied in these circumstances. However, the good faith and conscientious application of the principles set out above should enable a judge to determine whether disqualification is required.

This opinion has been reviewed by and is the opinion of the Judicial Inquiry Commission.

Respectfully Submitted,