

Judicial Inquiry Commission

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September 24, 1993

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

Pending in your court is an appeal of a decision of the municipal board of zoning adjustment. Except for the facts that the members of the zoning board are appointed by the city council and are reimbursed for expenses, the board is autonomous of the council. Your cousin, who is related within the fourth degree of kinship, is a member of the city council.

It is the opinion of this Commission that you are not disqualified under these facts. However, you would be disqualified if your cousin, the council member, had an interest that could be substantially affected by the outcome of the appeal. Canon 3C(l)(d)(ii).

In Advisory Opinion 92-426, this Commission held that a judge is not disqualified to preside over a case in which the city is named as a party merely because the judge's spouse is employed as the library director for the city-county public library and is paid as a city employee. In Advisory Opinion 88-322, this Commission held that the fact that a judge's wife is a teacher employed by a city board of education does not per se cause the judge's disqualification in all proceedings in which the city board of education is a party. See also Advisory Opinion 79-59 (Where the daughter or other close relative of a judge has a summer job as a clerk with the Tax Board of Equalization and appeals from the judgments of the Board are presently pending before the judge, the judge should disclose in the record the fact of his daughter's employment and should then disqualify himself unless the parties agree in writing that the judge's relationship is immaterial.).

Even if a disqualification arises because your cousin has an interest that could be substantially affected by the outcome of the appeal of the decision of the board of zoning adjustment, that disqualification may be remitted as provided by Rule 3D.

This Advisory Opinion has been considered by the Commission and is the opinion of the Judicial Inquiry Commission.