

Judicial Inquiry Commission

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December 9, 1994

This is in response to your request for an advisory opinion from the Judicial Inquiry Commission. Your question is whether you are disqualified to presiding over a case prosecuted by a supernumerary district attorney who is a member of the law firm in which your brother is a partner.

It is the opinion of this Commission that the mere fact that the prosecutor, a supernumerary district attorney, is a member of the same law firm as your brother does not require your disqualification from any case in which that prosecutor appears. See Advisory Opinion 88-338 (A judge is not automatically disqualified from sitting in a proceeding in which a party is represented by a member of a law firm in which the judge's uncle holds the position of senior partner.)

In Advisory opinion 81-101, this Commission held that where the judge's brother is a member of a law firm, the senior member of which is an appointed part-time assistant district attorney, the judge is disqualified only where the senior member of the judge's brother's law firm actually participated as assistant district attorney in the trial or the preparation of the case and it is known to the judge that the senior member so participated. That opinion was modified and overruled by 88-338.

The situation is governed by Canon 3C, Alabama Canons of Judicial Ethics. Here, the mere existence of your brother's partnership interest is not a disqualifying factor. However, disqualification would occur if other circumstances exist under which the judge's "impartiality might reasonably be questioned" or if the judge knows that his brother has an interest in the law firm that could be substantially affected by the outcome of the criminal proceedings. A judge must examine the facts in each case where the supernumerary is prosecuting a defendant and must make those determinations. If either factor exists, the judge must disqualify himself. These provisions place a heavy burden on the judge in each case. In considering these issues, the judge must be ever cognizant of the provisions of Canon 1 setting out the object of the Canons. For example, see Advisory Opinion 93-470 (The appearances of impropriety are such that a judge should recuse himself in a capital case where the judge's brother is a partner in the firm, where most of the partners are assistant district attorneys, and where one of the partners is the attorney for the victims' estates, even though none of the assistant district attorneys were involved in the prosecution of the defendant and no civil action against the defendant is contemplated.).

This advisory opinion has been approved by and is the opinion of the entire Commission.