95-540

Judicial Inquiry Commission

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MONTGOMERY, ALABAMA 36104

February 10, 1995

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 civil action under the following circumstances:

> A minor has brought a civil action against a local hospital, the attending physician, and others for injuries allegedly resulting from the use of a certain "electro surgical unit: and/or "circumcision clamps." The judge's wife is a registered dietitian, and is self-employed as a consulting dietitian. In that capacity she provides counseling service to the dietary staff and patients at the defendant hospital approximately three days a month. The defendant physician may have occasionally referred a patient to her for dietary consulting or instructions. The judge's wife is not named as a party defendant and the cause of action does not have any connection with any dietary matter.

It is the opinion of this Commission that you are not disqualified under these circumstances.

The Commission finds no ground for the appearance of impropriety and no cause to reasonably question your impartiality in this matter. Canon 2, 3C(I), Alabama Canons of Judicial Ethics. See Advisory Opinions 80-66, 84-217, 84-134, 81-125, 85-232 (spouse's mere association or employment with law firm does not disqualify judge in cases in which firm member appears); 86-286 (judge not disqualified where spouse a deputy sheriff); 88-322 (fact that judge's wife is teacher employed by city board of education does not per se cause the judge's disqualification in all proceedings in which board of education is a party); 88-345 ("Employment of a judge's spouse by a governmental agency does not disqualify the judge from sitting in all cases involving that agency. A more direct involvement, a direct interest, or a personal knowledge would be required on the part of the judge or his spouse for disqualification to occur.")

Disqualification would be required by the fact of your wife's employment if your wife had an interest which could be affected by the outcome of the civil proceeding. Canon 3C(I)(c). However, no such interest appears to exist under the circumstances presented.

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