

Judicial Inquiry Commission

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This is in response to your request for an advisory opinion from the Judicial Inquiry Commission. Your question is whether a judge is disqualified to preside at a capital murder trial where his son represents a co-defendant charged with the same offense by separate indictment.

A judge is not disqualified from presiding over a criminal case merely because the judge's son represents a separately indicted co-defendant. However, numerous factual situations not before the Commission could arise which would be disqualifying. It does not appear from the sole fact of representing a separately indicted co-defendant that the judge's son has "an interest that could be substantially affected by the outcome of the proceeding" under Canon 3C(l)(d)(ii), Alabama Canons of Judicial Ethics.

However, it does appear from the facts provided that recusal is required to "avoid the appearance of impropriety" and to "promote public confidence in the integrity and impartiality of the judiciary." Canon 2A. This Commission cannot overlook the fact that this case involves a criminal prosecution in which the defendant faces the possible sentence of death. In Alabama, capital cases receive the closest scrutiny from both the media and the judicial system. In *Ex parte Monk*, 557 So.2d 832, 836 (Ala. 1989), the Alabama Supreme Court recognized that "the capital case is 'sufficiently different' from other cases, because there is no other criminal case in which the crime is murder and the possible punishment is death or life imprisonment without parole." In a capital case, there should not be even the slightest hint that the judge might be partial or biased.

The possibility of a disqualifying situation arising and the appearances of impartiality are such that public confidence in the integrity and impartiality of the judiciary is best served by your recusal.

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