

Judicial Inquiry Commission

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The Commission has considered your request for an advisory opinion whether a judge is disqualified from hearing a case in which the defendant is a corporation that is a subsidiary of a large corporation for which the judge's son-in-law works. The son-in-law is not an agent, officer, or director of the corporation by which he is employed, but he is a very small stockholder as a result of an employer stock distribution plan.

This Commission has previously addressed the issue of the employment by a party of a judge's relative on several occasions. We have held that the mere fact that a close relative of a judge is employed by a party to a suit does not disqualify the judge from hearing a case unless the judge's relative is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding (e.g., the outcome might affect the relative's salary or employment status), or is known by the judge to likely be a material witness in the proceeding. Advisory Opinions 80-73, 81-103, 82-133, 86-286, 88-322, 88-345, and 92-462. See, Canons 3C (1)(d)(ii) and (iii). These principles also apply when the judge's relative is employed by the parent corporation of a party.

Of course, if the judge has a personal bias or prejudice concerning a party or if the judge has personal knowledge of disputed evidentiary facts concerning the proceeding as a result of a son-in-law's employment, disqualification would occur under Canon 3C(l)(a). See, Advisory Opinion 86-286. Also, if the judge has knowledge that his son-in-law has a personal involvement in the matter in controversy, that also might cause disqualification under the general provision in Canon 3C(l) by causing the judge's impartiality to reasonably be questioned. See, Advisory Opinion 88-345. This would depend upon the particular circumstances involved.

The Commission has not previously addressed the question of ownership of stock in a party by a relative other than a judge's spouse or minor child residing with the judge, nor the question of ownership of stock of a parent corporation when a subsidiary is a party. Under Canon 3C(l)(d)(ii), a judge is disqualified when a person within the fourth degree of relationship to the judge or the spouse of such person is known to the judge to have an interest that would be substantially affected by the outcome of the proceeding. Thus, if the judge knows that his son-in-law's stock ownership could be substantially affected by the outcome of the proceeding, disqualification would be required under Canon 3C(l)(d)(ii). In determining whether the son-in-law's interest could be "substantially affected", the judge should consider any benefit or loss the

son-in-law might receive, whether such benefit or loss is such that a reasonable person might question the judge's impartiality as a result, and the extent or degree of the interest.

L. Abramson, Judicial Disqualification Under Canon 3C of the Code of Judicial Conduct at 64-65 (American Judicial Society, 1986). Any disqualification under Canon 3C(l)(d) is subject to remittal under Canon 3D.