

Judicial Inquiry Commission

800 SOUTH MCDONOUGH STREET
SUITE 201
MONTGOMERY, ALABAMA 36104

January 24, 1997

The Judicial Inquiry Commission has considered your request for an advisory opinion concerning the following circumstances. The presiding circuit judge's spouse is the presiding municipal judge for a city in the circuit and, as such, he is the administrative officer for the municipal court. The presiding municipal judge is also a full-time city employee. The circuit judge recuses herself from all cases which her spouse adjudicated that are appealed to the circuit court.

Your first question is whether the circuit judge must recuse herself from all other appeals de novo out of the city court even though presided over by another municipal judge. This situation is similar to the one addressed in Advisory Opinion 89-353 wherein the circuit judge's spouse was a city attorney, responsible for the management of the city attorney's office and several assistant city attorneys. The Commission decided that the judge was not disqualified automatically from sitting in cases in which an assistant city attorney was counsel for the city, but was disqualified if the city attorney participated in the proceeding either directly as counsel or indirectly by actively directing the actions of the city attorney's office in the proceeding.

It is the opinion of the Commission that, at the outset of any appeal de novo from the municipal court in question, the circuit judge in the instant case should ascertain whether the judge's spouse participated as a judge in any aspect of the proceeding below. If the circuit judge's spouse participated in the case below, the circuit judge is disqualified. The circuit judge would not be disqualified merely because generally established municipal court procedures or guidelines were followed.

Your second question is whether the circuit judge is disqualified from hearing cases in which the city is a party due to her husband's status as a full-time employee of the city. 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).

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 her spouse's employment, disqualification would occur under Canon 3C(1) (a). See, Advisory Opinion 86-286. Also, if the judge has knowledge that her spouse has a personal involvement in the matter in controversy, that also might cause disqualification under the general provision in Canon 3C(1) by causing the judge's impartiality to reasonably be questioned. See, Advisory Opinion 88-345. This would depend upon the particular circumstances involved.

Yours very truly,

JUDICIAL INQUIRY COMMISSION