

Judicial Inquiry Commission

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The Judicial Inquiry Commission has considered your request for an advisory opinion concerning whether a judge must recuse himself from hearing a case in which the judge's brother-in-law works as an in-house attorney with the parent corporation of a corporate party.

It is the opinion of the Commission that, under the Canons of Judicial Ethics, a judge is disqualified from hearing a case in which the judge's brother-in-law works as an in-house attorney with the parent corporation of a corporate party.

In Advisory Opinion 95-564, a copy of which is enclosed, the Commission addressed the possible bases for recusal arising out of a relative's employment by a party. The Commission explained that recusal might be required if:

- (a) The relative is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding. Canon 3C(l)(d)(ii).
- (b) The relative is known by the judge to likely be a material witness in the proceeding. Canon 3C(l)(d)(iii).*
- (c) The judge has a personal bias or prejudice concerning a party. Canon 3C(l)(a).
- (d) The judge has personal knowledge of disputed evidentiary facts concerning the proceeding as a result of the relative's employment. Canon 3C(1)(a).
- (e) The judge has personal knowledge that his or her relative has personal involvement in the matter in controversy that might give rise to a reasonable question regarding the judge's impartiality. Canon 3C(l).

* With respect to Canons 3C(l)(d)(ii) and (iii), the Commission noted, "These [same] principles also apply when the judge's relative is employed by the parent corporation of a party."

In addition to the bases identified in Advisory Opinion 95-564, a judge may be disqualified if a relative is named a party to the proceeding or is an officer, director, or trustee of a party. Canon 3C(l)(d)(i). In this case, the Commission believes that, on the facts stated, disqualification is required due to the attorney/client relationship between his brother and the corporate party. The fact that the judge's brother's only client is the corporation should give a person of ordinary prudence reason to question the judge's impartiality.

As a general matter, whether a judge is disqualified depends on the factual circumstances involved, and any ruling is for the judge, not the Commission, to make unless the facts clearly show that disqualification is required. In making any ruling, the judge should keep two other points in mind. First, while the judge's personal knowledge is of critical importance, there is no general duty of inquiry. Second, any disqualification arising under Canon 3C(l)(d) (and Canon 3C(l)(c), as well) is subject to remittal under Canon 3D.

The Commission also hopes that this opinion will give you guidance on any similar issues that may arise in the future.

Yours very truly,