

## Judicial Inquiry Commission

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August 15, 1997

The Judicial Inquiry Commission has considered your request for an advisory opinion regarding a judge's obligation to recuse from hearing a criminal case in which the defendant's aunt is the wife of the judge's wife's first cousin. The criminal case in issue is a capital referral.

It is the opinion of the Commission that the judge is disqualified from hearing a criminal case in which the defendant's aunt is the wife of the judge's wife's first cousin. Canon 3C(l)(d)(i).

Canon 3C(l)(d)(i) of the Canons of Judicial Ethics requires a judge to disqualify himself or herself from hearing cases in which "[h]e or his spouse, or a person within the fourth degree of relationship to either of them, or the spouse of such a person" is a party. The defendant is within the fourth degree of consanguinity or affinity, so the judge is disqualified. While Canon 3D permits the remittal of a disqualification arising under Canon 3C(l)(d) where all parties agree in writing and such agreement is incorporated in the record, the judge should be hesitant before accepting a proffered remittal agreement if one is offered in a capital case and should put the defendant's understanding and consent on the record.

Yours very truly,

THIS OPINION HAS BEEN SUPERCEDED BY ADVISORY OPINION 97-677.