

Judicial Inquiry Commission

800 SOUTH MCDONOUGH STREET
SUITE 201
MONTGOMERY, ALABAMA 36104

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The Judicial Inquiry Commission has considered your request for an opinion concerning whether, under the Alabama Canons of Judicial Ethics, a judge is disqualified from sitting in proceedings involving the spouses of the judge's senior staff attorney and a law clerk as attorneys. The specific fact situations include (1) the judge's senior staff attorney is the spouse of the Chief Assistant District Attorney in a certain circuit and (2) the judge's law clerk's spouse is employed as law clerk to a circuit judge. The judge considering disqualification is an appellate judge. The issue presented is whether the judge is disqualified from sitting in review of cases in which either the district attorney's office appears to prosecute or where a case presented was presided over by the judge who employs the law clerk's spouse.

It is the opinion of the Commission that the mere fact of the employment of the spouses of the judge's staff members does not cause the judge's disqualification in cases involving their employers. However under Canon 3C, circumstances could arise which cause the judge's disqualification.

Canon 3C requires disqualification in proceedings in which the judge's disqualification is required by law or in which the judge's impartiality might reasonably be questioned. It is specifically noted in the commentary to that canon that the employment of a lawyer in a governmental agency does not per se create the type of association with other lawyers in the agency which could give rise to disqualification. Nor does the mere fact of a relationship to a judge's employee cause the judge to be disqualified in matters involving the agency or firm with which the employee's relative is associated. However, the judge should make sure that not even a possibility exists of the judge's employee becoming involved in any way with any matter involving the employee's relative.

In the matter of cases from the circuit in which the chief assistant district attorney, with supervisory authority over all other assistant district attorneys, is the spouse of the judge's senior staff attorney, the judge must make sure that the senior staff attorney has nothing to do with the cases. In this circumstance, considering the staff attorney's supervisory authority over the judge's law clerks, and the close working relationships among the judge's staff, the judge would not be remiss in recusing from the cases from the circuit in question. Such an action would not appear to do harm to the orderly disposal of cases by other judges and would dispel any appearance of impropriety which might exist.

The situation is somewhat different as to matters involving the circuit judge who employs the spouse of an appellate judge's law clerk. A law clerk is in a different position from a senior staff attorney. The law clerk of an appellate judge usually serves a limited term while the senior staff attorney is a long-term employee. An appellate law clerk generally exercises no supervisory authority over anyone in the judge's office. Thus, there would be no need for the judge to recuse in matters involving the circuit judge who employed the law clerk's spouse. The judge should however take all precautions to insure that the appellate law clerk has nothing to do with the review of any cases involving the circuit judge.

Yours very truly,

JUDICIAL INQUIRY COMMISSION