

JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 99-729

DISQUALIFICATION DUE TO PERSONAL AND PROFESSIONAL RELATIONSHIP WITH A PARTY

ISSUE

Is a judge disqualified to hear cases on account of certain personal and professional relationships between the judge and the defendant? **Answer:** The judge is not disqualified based on the facts presented, but should recuse herself if she feels affected.

FACTS

The judge has pending before her a Rule 32 petition in which the defendant/petitioner is a member of a law firm, and the judge may be assigned future Rule 32 petitions by other members of this firm. While engaged in the practice of law, the judge on occasion referred cases to this law firm, and she tried cases with and against the current defendant/petitioner. The firm has represented the judge and members of the judge's family in the past. The members of the firm have made small donations to some of the judge's past campaigns for judicial office. The current defendant/petitioner is one of the judge's former high school professors.

DISCUSSION

Under Canon 3C(1), Alabama Canons of Judicial Ethics, recusal is required when "facts are shown which make it reasonable for members of the public or a party, or counsel opposed to question the impartiality of the judge." Acromag-Viking v. Blalock, 420 So.2d 60, 61 (Ala. 1982). Specifically, the test under Canon 3C(1) is: "Would a person of ordinary prudence in the judge's position

knowing all of the facts known to the judge find that there is a reasonable basis for questioning the judge's impartiality?" Matter of Sheffield, 465 So.2d 350, 356 (Ala. 1984).

The Commission has previously written to the question of a judge's friendship or other association with a party to a case. Advisory Opinions 93-510, 93-511, 95-541, and 96-613. "Whether or not disqualification is required when a friend appears as a party to a suit before a judge depends on how personal the relationship is between the judge and the party." J. Shaman, S. Lubet, J. Alfini, Judicial Conduct and Ethics §4.15 at 124 (2d ed. 1995).

"The fact that one of the parties before the court is known to and thought well of by the judge is not sufficient to show bias. Duncan v. Sherrill, 341 So. 2d 946 (Ala. 1977)."

Murphy v. State, 455 So. 2d 924, 929 (Ala. Cr. App. 1984). "[I]t is an inescapable fact of life that judges serving throughout the State will necessarily have had associations and friendships with parties coming before their courts. A judge should not be subject to disqualification for such ordinary relations with his fellow citizens." Ex parte Hill, 508 So. 2d 269, 272 (Ala. Civ. App. 1987) (judge's recusal upheld where judge recused himself because "there has been a long association between the parties and this judge and his wife, from living together at an early age in an apartment complex to communication and schooling of the children, church affiliation and many other associations over the years"). *See also*, Clemmons v.

State, 469 So. 2d 1324 (Ala. Crim. App. 1985) (“That the trial judge and victim knew each other and possibly enjoyed a friendship both professionally and socially is not reason enough to require the judge to recuse himself”).

The Commission finds no basis for reasonably questioning the judge’s impartiality in either the fact that the judge while engaged in the practice of law had on occasion referred cases to a particular firm and tried cases with and against the current defendant/petitioner, or the fact that the defendant/petitioner is one of the judge’s former high school professors. *See* Advisory Opinion 96-613 (the judge and a party attended the Air Force Academy at the same time); and Advisory Opinion 95-541 (the judge and a party attended the same Sunday school class). The facts provided do not suggest the type of close personal friendship that would *ipso facto* cast reasonable doubt on the judge’s impartiality, thereby requiring disqualification under Canon 3C(1). *Compare, Bryars v. Bryars*, 485 So.2d 1187 (Ala. Civ. App. 1986).

The Commission has long held that a judge is disqualified to hear cases in which a party is represented by an attorney currently representing the judge or the judge’s spouse in unrelated litigation. *See, e.g.*, Advisory Opinions 80-74, 82-168, 88-337, 89-373, 92-443, and 95-588. However, such disqualification ordinarily extends only to the attorney actually representing the judge or the judge’s spouse and not to other members of the same firm. Advisory Opinions 88-337, 93-494, 96-616, and 97-643. Moreover, absent any extraordinary additional circumstances causing a continued question as to impartiality, a judge is not disqualified to hear an action after a circumstance causing the

judge to be disqualified ceases to exist. *E.g.*, Advisory Opinions 92-454, 96-605, 96-606, 96-616, 96-617, 98-692, and 98-714. Thus, the Commission has held that a judge is not disqualified to hear a case because an attorney in the case previously represented the judge or the judge’s spouse, absent the existence of unusual additional circumstances causing a continued question as to the judge’s impartiality.

The Commission also previously has held that a judge is not disqualified in a proceeding merely because he or she received campaign contributions from a litigant. Advisory Opinions 84-213, 84-227, and 96-613. Unless additional special circumstances exist which cause the judge’s impartiality to reasonably be questioned, disqualification is not required by such contributions. Advisory Opinions 84-227 and 96-607.

In the instant situation, the mere fact of the relationships described is insufficient *per se* to require disqualification. Assuming that the judge feels she is able to fairly preside in the case, it is the opinion of the Commission that she is not disqualified.

REFERENCES

Acromag-Viking v. Blalock, 420 So.2d 60 (Ala. 1982).

Alabama Advisory Opinions 80-74, 82-168, 84-213, 84-227, 88-337, 89-373, 92-443, 92-454, 93-494, 93-510, 93-511, 95-541, 95-588, 96-605, 96-606, 96-607, 96-613, 96-616, 96-617, 97-643, 98-692, and 98-714.

Alabama Canons of Judicial Ethics, Canons 3C(1).

Bryars v. Bryars, 485 So.2d 1187 (Ala. Civ. App. 1986).

Clemmons v. State, 469 So. 2d 1324 (Ala. Crim. App. 1985).

Duncan v. Sherrill, 341 So. 2d 946 (Ala. 1977).

Ex parte Hill, 508 So. 2d 269 (Ala. Civ. App. 1987).

J. Shaman, S. Lubet, J. Alfini, Judicial Conduct and Ethics §4.15 (2d ed. 1995).

Matter of Sheffield, 465 So.2d 350 (Ala. 1984).

Murphy v. State, 455 So. 2d 924 (Ala. Cr. App. 1984).

This opinion is advisory only and is based on the specific facts and questions submitted by the judge who requested the opinion pursuant to Rule 17 of the Rules of Procedure of the Judicial Inquiry Commission. For further information, you may contact the Judicial Inquiry Commission, 800 South McDonough Street, Suite 201, Montgomery, Alabama 36104; tel.: (334) 242-4089; fax: (334) 240-3327; e-mail: jic@alalinc.net.