

JUDICIAL INQUIRY COMMISSION

DATE ISSUED: JUNE 30, 1999

ADVISORY OPINION 99-731

DISQUALIFICATION WHEN AN ATTORNEY IN THE CASE OR A MEMBER OF THE ATTORNEY'S FIRM REPRESENTS THE JUDGE IN UNRELATED LITIGATION

ISSUE

I. If a member of a judge's attorney's law firm performs research and writing in connection with the judge's case, is the judge disqualified from hearing unrelated cases in which that member appears? **Answer:** Yes.

II. When an attorney is retained to represent a judge, may the judge complete cases then in progress before him in which that attorney represents a party, including ruling on cases already under submission? **Answer:** No, not if the judge's attorney continues in the case before the judge; if the judge's attorney withdraws from a case before the judge, the judge is not disqualified to proceed in the event another member of the same firm who has no involvement in the judge's case appears.

FACTS

The judge expects a suit to be filed against him for personal injuries arising from an accident, and the judge's liability insurance carrier intends to refer the case to a certain attorney if such suit is filed. That attorney may ask another member of his firm to do research and writing in connection with the judge's case. The judge currently has cases in progress before him in which a party is represented by the attorney the judge expects to be retained to defend him.

DISCUSSION

The Commission has previously held that a judge is disqualified from a case in which a party is represented by an attorney who currently is representing the judge in unrelated litigation. The Commission also has held that, absent extraordinary circumstances, a judge is not disqualified from hearing a case in which another member of the judge's attorney's law firm appears. *See, e.g.,* Advisory Opinions 92-443 and 96-616.

The disqualification from hearing cases in which a party is represented by the judge's attorney is based on the general provision in Canon 3C(1) that a judge is disqualified whenever the judge's "impartiality might reasonably be questioned." Recusal is required under Canon 3C(1) 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). This test may sometimes cause disqualification of a judge who has no actual bias. *Matter of Sheffield*, 465 So.2d 350, 156 (Ala. 1984).

It is the opinion of the Commission that it is reasonable for a member of the public, a party, or opposing counsel to question the impartiality of the judge when another attorney in the case who practices law with the judge's attorney is actively involved in the judge's case. Thus, the Commission concludes that a judge is disqualified from hearing cases in which a member of the judge's attorney's law firm appears where that member performs research or writing in connection with the judge's case.

In Advisory Opinion 88-336, the Commission held that a judge was disqualified to hear post-trial proceedings in a case after an attorney who was representing the judge's spouse appeared to represent a party in those proceedings. It is the opinion of the Commission that a judge's disqualification commences when an attorney in the case is engaged to represent the judge, and that the judge may take no further action in the case after that point in time. Thus, a judge may not complete a case in progress after an attorney in the case is retained as the judge's attorney.

However, the Commission also has held on a number of occasions that, unless there are extraordinary factors that would require continued disqualification, a judge is not disqualified to hear an action after a circumstance causing disqualification has ceased to exist. *See*, Advisory Opinion 98-692. In Advisory Opinion 96-616 the Commission held that, absent unusual additional circumstances, if the judge's attorney withdraws from a case pending before the judge, the judge is not disqualified to proceed in the event another member of the same firm who has no involvement in the judge's case appears to handle the case. The Commission hereby reaffirms its decision in Advisory Opinion 96-616.

REFERENCES

Acromag-Viking v. Blalock, 420 So.2d 60, 61 (Ala. 1982).

Alabama Advisory Opinions 88-336, 92-443, 96-616, 98-692.

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

Matter of Sheffield, 465 So.2d 350, 156 (Ala. 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.