

JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 99-736

DISQUALIFICATION WHEN A REFEREE APPOINTED BY JUDGE IS AN ATTORNEY IN THE CASE

ISSUE

Is a judge disqualified to hear cases in which a party is represented by an attorney who is a referee appointed by the judge to assist on a part-time basis with other cases over which the judge presides?

Answer: Yes.

FACTS

A family court judge with responsibility for domestic relations, juvenile, paternity, and child support cases has appointed a local attorney as a referee to assist with the judge's case load on a part-time basis (twelve hours per month). The attorney has been handling cases as a referee for the past several months. It is anticipated that this attorney will be retained as counsel for parties in domestic relations cases that will be assigned to the judge.

DISCUSSION

A judge is required to disqualify himself in a proceeding in which his "impartiality might reasonably be questioned." Canon 3C(1).

"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). See, also, *Wallace [v. Wallace]*, 352 So.2d 1376, 1379, (Ala.Civ.App. 1977)]. Specifically, the Canon 3C(1) test 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?' Thode, *The Code of Judicial Conduct - The First Five Years in the Courts*, 1977 Utah L.Rev. 395, 402."

Matter of Sheffield, 465 So.2d 350, 355-356 (Ala. 1984). The recusal test stated in Canon 3C(1) sometimes bars trial by a judge who has no actual bias in the case. *Matter of Sheffield*, 465 So.2d at 356.

A referee who assists a judge on a continuing basis stands in a position of close trust with the judge who appointed him. The judge must, of necessity, repose special confidence in that attorney. Thus, the Commission concludes that a person of ordinary prudence might reasonably question the judge's impartiality in a case in which that referee represents a party.

It is the opinion of this Commission that a judge is disqualified under Canon 3C(1) to hear cases in which a party is represented by an attorney who is a referee appointed by the judge then assisting the judge on a regular, on-going basis with other cases over which the judge presides.

REFERENCES

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

Matter of Sheffield, 465 So.2d 350, 355-356 (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.