

JUDICIAL INQUIRY COMMISSION

DATE ISSUED: JUNE 2, 2000

ADVISORY OPINION 00-754

DISQUALIFICATION WHEN A REFEREE IS AN ATTORNEY IN THE CASE

ISSUE

Are all the judges in a circuit disqualified to hear cases in which a party is represented by an attorney who is a referee appointed to hear child support matters when all the judges assign cases to the referee, and the assigning judge must approve orders by the referee?

Answer: Yes.

FACTS

The presiding judge in a judicial circuit has appointed a referee to hear and issue orders pertaining to child support matters. This appointment was made pursuant to Rule 35(C), Alabama Rules of Judicial Administration. The referee is paid by a grant through the Administrative Office of Courts.

The referee was chosen jointly by all of the judges in the circuit. Those judges all receive a proportional share of the domestic relations cases filed in the circuit, and they routinely send to the referee any child support cases so assigned to them. The referee's orders must be approved by the judge to whom the case was assigned. The referee hears cases in a courtroom, and he wears a judicial robe while performing his duties as a referee.

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.

In Advisory Opinion 99-736, the Commission held 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, ongoing basis with other cases over which the judge presides. This opinion addressed the situation where a referee is chosen by a judge to assist the judge on a continuing basis with cases over which the judge routinely presides. The Commission noted that such a referee stands in a position of close trust with the judge who appointed him, and it concluded that a person of ordinary prudence might reasonably question the judge's impartiality in a case in which such a referee represents a party.

Because the referee in question hears cases in a courtroom while wearing a judicial robe, he would appear to the general public to be a judge. The Commission also notes that a referee appointed under Rule 35(C) of the Alabama Rules of Judicial Administration is, by the terms of that rule, a confidential employee of the judge or judges in the circuit who hear child support cases. Under these facts, it is the opinion of the Commission that a person of ordinary prudence might reasonably question the impartiality of the judges of the circuit in cases in which this referee represents a party. Thus, the Commission concludes that all the judges in the circuit are disqualified to hear cases in which this referee appears as counsel for a party.

REFERENCES

Alabama Advisory Opinion 99-736.

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

Alabama Rules of Judicial Administration, Rule 35(C).

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