

JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 00-756

DISQUALIFICATION WHEN THE JUDGE'S PARALEGAL IS AN OWNER OF A BAIL BONDING COMPANY

ISSUE

Would transfer of an ownership interest in a bail bonding company to a judge's paralegal who assists the judge only with the judge's civil docket cause disqualification to hear any cases? **Answer:** Yes, the judge would be disqualified to adjudicate any issues involving a bond issued by that company.

FACTS

A circuit judge's paralegal is a close relative of the president of a bail bonding company that does business in the city where the judge sits. The relative proposes to transfer his ownership interest in the company to the judge's paralegal, who assists the judge with the judge's civil docket. The paralegal has no direct dealings with criminal matters that involve bail bonding issues, and she would have no direct dealings with the bail bonding company.

DISCUSSION

Since it does not appear that any of the other specific grounds for disqualification stated in the subsections to Canon 3C(1) apply, the issue in this case is whether the judge is disqualified under that canon's general provision requiring disqualification when the judge's "impartiality might reasonably be questioned." The test under this canon 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?" *In re Sheffield*, 465 So.2d 350, 356 (Ala. 1984). The question under Canon 3C(1) is not whether the judge is impartial in fact, but rather whether another person, knowing all of the circumstances, might reasonably question the judge's impartiality. *Ex parte Duncan*, 638 So.2d 1332, 1334 (Ala. 1994).

The Commission has previously observed that a law clerk serves in a special relationship to a trial court judge and, therefore, that the same standards for disqualification should apply in situations concerning the law clerk as would apply to the judge. Advisory Opinion 83-190. In some circumstances, disqualification may be avoided by the law clerk having no involvement in assisting the judge with the case. *See, e. g.*, Advisory Opinions 83-190 and 85-231 (law clerk's close relative is an attorney in the case). However, under the facts presented, the judge's law clerk will have a direct financial interest in the outcome of cases in which a bond issued by the company of which she is an owner is involved. The Commission has previously held that it would constitute a violation of the Alabama Canons of Judicial Ethics for a judge to sentence a criminal defendant to attend a DUI school taught by the judge's bailiff. The Commission found under Canons 1 and 2A that such an arrangement would be "fraught with the appearance of impropriety and does not promote public confidence in the integrity and impartiality of the judiciary." It also noted that Canon 2C requires that a judge neither "convey [nor] permit others to convey the impression that they are in a special position to influence him." Advisory Opinion 94-538.

The West Virginia Judicial Investigation Commission has held that a magistrate must recuse from any case involving the magistrate assistant's child serving as a bondsman in which bond becomes an issue. It also concluded that appropriate steps should be taken to assure that no referrals from either the magistrate or the magistrate assistant were made to the magistrate assistant's child. West Virginia Advisory Opinion, April 5, 1995.

It is the opinion of the Commission that a judge may not adjudicate any issues involving a bond issued by a bail bonding company of which the judge's paralegal is an owner.

REFERENCES

Alabama Advisory Opinions 83-190, 85-231, and 94-538.

Alabama Canons of Judicial Ethics, Canon 1, 2A, 2C, and 3C(1).

Ex parte Duncan, 638 So.2d 1332 (Ala. 1994).

In re Sheffield, 465 So.2d 350 (Ala. 1984).

West Virginia Advisory Opinion, April 5, 1995.

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.