

JUDICIAL INQUIRY COMMISSION

DATE ISSUED: JULY 21, 2000

ADVISORY OPINION 00-757

DISQUALIFICATION WHEN A REFEREE APPOINTED BY THE 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 regular basis with the judge's child support cases? **Answer:** Yes.

FACTS

A district judge has appointed an attorney as a referee to assist him with his child support cases. The appointment was authorized by the Administrative Office of Courts and approved by the presiding circuit judge. The referee hears modification, paternity, and contempt matters, conducting hearings about three days per month and averaging about thirty-five cases per session. The referee wears a judicial robe while hearing cases. All appeals from the referee's decisions go directly to the judge. The referee has an active criminal and juvenile law practice, including appointments to represent indigent defendants and juveniles.

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 was disqualified under Canon 3C(1) to hear cases in which a party was represented by an attorney who was a referee appointed by the judge, then assisting the judge on a regular, ongoing basis with other cases over which the judge presided. 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.

In Advisory Opinion 00-754, the Commission recently advised a presiding judge that all the judges in the circuit are 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 in the circuit are assigned such cases and are assisted by the referee. The Commission noted that, 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. It also observed 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 who hear child support cases.

The facts presented in the present inquiry are not materially different from those considered

in Advisory Opinions 99-736 and 00-754. It is the opinion of the Commission that the judge is disqualified to hear cases in which a party is represented by the referee in question.

REFERENCES

Alabama Advisory Opinions 99-736 and 00-754.

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.