

JUDICIAL INQUIRY COMMISSION

DATE ISSUED: AUGUST 25, 2000

ADVISORY OPINION 00-759

DISQUALIFICATION RELATED TO A PENDING SUIT FOR THE WRONGFUL DEATH OF THE JUDGE'S MOTHER-IN-LAW

ISSUES

I. Is a judge disqualified in cases in which a hospital is a party when his daughter, in her capacity as executrix of her grandmother's estate, has filed a wrongful death action against the hospital? **Answer:** The judge is disqualified in medical liability cases in which the hospital is a party.

II. Is the judge disqualified from hearing other cases in which an attorney in the foregoing case represents a party? **Answer:** Yes, since the judge's spouse has an interest in the outcome of the wrongful death action.

III. Is the judge disqualified from hearing cases in which other members of the firms of the individual attorneys in the wrongful death case appear? **Answer:** No, so long as the other attorneys do not assist with the wrongful death action and absent additional circumstances.

IV. May any disqualification arising in the foregoing circumstances be remitted? **Answer:** No.

FACTS

Acting in her capacity as executrix of her grandmother's estate, a judge's daughter has brought a wrongful death action against a local hospital. The decedent was the judge's mother-in-law. As an heir, the judge's spouse has a financial interest in the outcome of this litigation.

DISCUSSION

The Commission addressed a situation similar to the one presented in Advisory Opinion 94-531. In that case, the judge's former wife had filed a professional liability complaint against a local hospital that involved injury to the judge's young daughter. The Commission decided that these facts did provide cause for questioning the judge's impartiality in any medical liability case in which the hospital was a party and that the disqualification from such cases under Canon 3C(1) was not subject to remittal.

It is the opinion of the Commission that the impartiality of the judge in the present case is likewise reasonably questionable in medical liability cases in which the subject hospital is a party. Thus, the Commission concludes that the judge is disqualified to hear such cases. Since this disqualification arises under the general provision in Canon 3C(1) requiring disqualification of a judge in any proceeding in which the judge's impartiality might reasonably be questioned, it may not be remitted. Advisory Opinions 92-454 and 94-531.

The Commission has long held that a judge is disqualified to hear cases in which a party is represented by either an attorney currently representing the judge/the judge's spouse in unrelated litigation, or an attorney currently representing a party opponent to the judge or the judge's spouse in such litigation. *See, e.g.*, Advisory Opinions 95-588, 96-616, 98-704, and 99-731. The Commission has also found disqualification to result when the judge's spouse was the beneficiary of the unrelated litigation although not an actual party to that litigation. Advisory Opinion 92-454.

In Advisory Opinion 89-373, the Commission considered whether a judge was disqualified to hear cases in which an attorney appeared who was also the guardian ad litem for the judge's niece in the administration of the judge's father's estate. The Commission observed that there was a legal adversarial relationship between the judge and his niece while their claims to the estate remained unresolved, and that there was an adversarial relationship between the attorney representing the niece and the judge in his individual capacity. The Commission concluded that the judge was disqualified to hear cases involving the attorney or the attorney's partner so long as the estate and the niece's interest in it remained unresolved.

Disqualification due to representation of the judge, the judge's spouse, or a party opponent to either ordinarily only applies with respect to the particular attorney involved in the litigation in which the judge or the judge's spouse has an interest. In other words, disqualification usually does not extend to other members of such attorneys' firms. However, the judge is disqualified if the attorney in question provides any professional assistance with the case in which the judge or the judge's spouse has an interest or if there are extraordinary additional circumstances causing a reasonable question as to the judge's impartiality. Advisory Opinions 92-443, 96-616, 96-623, and 99-731. Disqualification due to the appearance in a case of an attorney who is currently representing the judge, the judge's spouse, or a party opponent to the interest of either is not subject to remittal. Advisory Opinions 92-454 and 96-616.

It is the opinion of the Commission that the judge is disqualified from hearing cases in which an attorney appears who represents a

party in the wrongful death action in question, and that this disqualification may not be remitted. However, absent unusual additional circumstances causing a reasonable question as to the judge's impartiality, the judge is not disqualified to hear cases in which other members of such attorneys' firms appear, so long as the attorney appearing before the judge does not assist with the wrongful death litigation.

REFERENCES

Alabama Advisory Opinions 89-373, 92-443, 92-454, 94-531, 95-588, 96-616, 96-623, 98-704, and 99-731.

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

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.