

JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 01-779

DISQUALIFICATION WHEN A RELATIVE PREVIOUSLY REPRESENTED A PARTY IN A RELATED CASE

ISSUES

Is a judge disqualified to hear a petition to establish paternity and obtain custody of a minor child due to the judge's spouse having previously represented a party in a related case? **Answer:** Under the specific facts presented, yes.

FACTS

A petition was recently filed to establish paternity and obtain custody of a minor child. About a year and a half ago, a divorce/custody case was filed that involved the same child. At the time the divorce action was filed, the petitioning husband was represented by an attorney who is the spouse of the judge to whom the petition to establish paternity has been assigned. The judge's spouse withdrew from the divorce/custody case a few months after the divorce petition was filed; at the time of the final hearing last year, the husband was represented by another attorney. The former husband and wife are named as the defendants in the current proceeding.

DISCUSSION

Canon 3C(1) requires disqualification whenever the impartiality of the judge "might reasonably be questioned." This disqualification standard may sometimes bar trial by judges who have no actual bias. *Ex parte Sheffield*, 465 So.2d 350, 356 (Ala. 1984).

The Commission has long held that a judge is disqualified under Canon 3C(1) from hearing any case in which a party is represented by an attorney who is related to the judge within the fourth degree of consanguinity or affinity. Under the specific facts and circumstances presented, the Commission is of the opinion that the judge's impartiality might reasonably be questioned due to her spouse's former representation of a party and, therefore, that the judge is disqualified to hear the subject case.

REFERENCES

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

Ex parte 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.