

JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 01-787

DISQUALIFICATION DUE TO INVOLVEMENT OF ATTORNEY-RELATIVE IN CASE

ISSUES

May a judge hear cases in which a party is represented by an attorney who is a member of a firm in which a close relative of the judge practices law if the relative has actively assisted trial counsel with case evaluation and preparation but does not appear in court or personally advise the client? **Answer:** No, a judge is disqualified to hear a case in which a close relative serves as a lawyer, whether or not the relative appears in court or personally advises the client.

FACTS

A circuit judge has several close relatives who practice law with large firms in the judge's jurisdiction. These relatives' participation in litigation does not always involve providing advice directly to a party or appearing in court or trial-related proceedings. For example, they may be involved in research, case evaluation and consultation with the firms' case-designated trial attorneys. In one particular present case, the judge's brother has attended depositions and conducted the examination of witnesses.

DISCUSSION

The Commission has previously concluded that a judge is disqualified under Canon 3C(1)(d) in any proceeding in which a party is represented by an attorney related to the judge within the fourth degree of consanguinity or affinity, but that a judge is not disqualified

merely because a party is represented by a member of a law firm in which a relative within the prohibited degree also is a member. *See, e.g.*, Advisory Opinions 97-653, 97-654 and 97-665.

The Commission has advised in prior cases involving a firm with which a close relative of the judge is affiliated that, when the judge's relative has not entered an appearance as counsel for a party in the case before the judge, the judge should disclose the existence of the relationship to the parties and their attorneys and then examine the facts in the particular case and determine whether any additional factor exists under which his impartiality might reasonably be questioned or whether the relative has an interest which could be substantially affected by the outcome of the proceeding. Advisory Opinions 88-338, 93-491, 93-500, and 97-653. In Advisory Opinion 93-491, the Commission stated, as an example, that a reasonable basis for questioning the judge's impartiality would exist if the judge knew that her relative had given legal advice to a party related to the matter in controversy. In Advisory Opinion 97-665 the Commission concluded that no basis for disqualification appeared where the judge's relative had "absolutely no participation in the case and is an associate whose compensation would not be expected to be directly affected by the outcome of the proceedings."

Canon 3C(1) requires disqualification whenever a 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).

It is the opinion of the Commission that a judge's impartiality might reasonably be questioned whenever a relative within the fourth degree of consanguinity or affinity assists trial counsel in the same firm in any way in the preparation or trial of a case. *Cf.*, Advisory Opinion 99-731 (a judge represented by a member of a firm is disqualified to hear cases involving other members of the firm who have been "actively involved in the judge's case"). Thus, the judge is disqualified to hear the present case in which his brother has participated in depositions. The judge also is disqualified in any other case in which a close relative actively assists trial counsel with case preparation or evaluation.

REFERENCES

Alabama Advisory Opinions 88-338, 93-491, 93-500, 97-653, 97-654, 97-665, and 99-731.

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

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

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