

## JUDICIAL INQUIRY COMMISSION

DATE ISSUED: APRIL 26, 2002

ADVISORY OPINION 02-795

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### DISQUALIFICATION WHEN THE JUDGE'S CHILD IS REPRESENTED BY LEGAL COUNSEL

#### ISSUES

I. Is a judge disqualified to hear cases in which a party is represented by the spouse of an attorney who is currently representing the judge's adult child in unrelated litigation, or by other attorneys in the firm in which the spouse practices? **Answer:** No.

II. Is a judge disqualified to hear cases in which a party is represented by an associate in the firm of an attorney who is representing the judge's adult child in unrelated litigation? **Answer:** No.

III. Is a judge disqualified to hear cases in which an attorney appears who represents a party that has filed a civil suit against the judge's adult child? **Answer:** No, not under the circumstances presented.

IV. Is a judge disqualified to hear cases involving a party who has filed a civil lawsuit against the judge's adult child over a credit card bill? **Answer:** No, not under the facts presented.

#### FACTS

A judge's adult child is currently involved in divorce and bankruptcy proceedings. The judge assisted the child in obtaining attorneys for these proceedings, and the judge and the judge's spouse are responsible for paying the legal fees for the divorce and the filing of the bankruptcy petition. Although the attorneys representing the child in these cases more

often talk about the cases with the child separately, they sometimes report to and advise both the judge and the judge's child. The judge also sometimes talks with the child about these cases and offers advice.

One of the attorneys who represent the judge's child in the divorce action has a spouse who is a practicing attorney with another firm. The spouse and other members of that firm are currently involved in active litigation before the judge.

Associates in the firm of the attorney representing the judge's child in the bankruptcy proceeding have active litigation before the judge.

The judge's child also has been sued by a local store for a credit card bill. The attorney who filed the civil suit against the child on behalf of the store appears before the judge on a regular basis. The store also sometimes has cases that are heard by the judge.

#### DISCUSSION

Canon 3C(1) provides generally that a judge should disqualify himself in any proceeding in which his "impartiality might reasonably be questioned." Several specific instances in which disqualification is required are listed in subsections of the canon. The first subsection includes cases in which the judge has a personal bias or prejudice concerning a party. Canon 3C(1)(a). The Commission assumes that the inquiring judge has no bias or prejudice concerning a party.

Since none of the other subsections of Canon 3C(1) potentially apply, the question is

whether any of the circumstances presented create a reasonable question as to the judge's impartiality. The test under Canon 3C(1) 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 long held that Canon 3C(1) requires disqualification of a judge to hear cases involving an attorney who is currently representing the judge or the judge's spouse in unrelated litigation. *E.g.*, Advisory Opinions 80-74, 82-168, and 92-454. This disqualification ordinarily does not extend to partners or associates of the attorney who are not involved in the judge's case. Advisory Opinions 78-53, 88-337, 91-437, 93-484, 96-616, and 99-731.

Under the facts presented, it appears that the judge does have a special relationship of trust with the attorneys engaged to represent the judge's child in the child's divorce and bankruptcy proceedings. However, just as a judge has no special relationship with partners or associates of his or her own attorney, the judge has no special relationship with the spouse of one of the attorneys representing his child in the divorce proceeding, with other members of her firm, or with associates of the attorney representing his child in the bankruptcy proceeding. The Commission finds no reasonable basis to question the judge's impartiality when the spouse, members of her firm, or other members of the

firm of the attorney representing the child in the bankruptcy proceeding appear in cases before the judge. Thus, it concludes that the judge is not disqualified to hear such cases.

The judge has not become involved in the lawsuit filed against his adult child by the local store. Absent such involvement, other extraordinary circumstances would have to exist to create a reasonable question as to the judge's impartiality in unrelated cases involving the store or its attorney. No circumstances creating a reasonable question as to the judge's impartiality in such cases have been presented. It is, therefore, the opinion of the Commission that the judge is not disqualified to hear them.

#### REFERENCES

Advisory Opinions 78-53, 80-74, 82-168, 88-337, 91-437, 92-454, 93-484, 96-616 and 99-731.

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

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

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

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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, P. O. Box 303400, Montgomery, Alabama 36130-3400; tel.: (334) 242-4089; fax: (334) 353-4043; E-mail: [jic@alalinc.net](mailto:jic@alalinc.net).