**JUDICIAL INQUIRY COMMISSION**

DISQUALIFICATION WHEN A PARTY IS REPRESENTED BY AN ATTORNEY REPRESENTING THE EXECUTOR AND ESTATE OF A CLOSE RELATIVE

## ISSUES

Is a judge disqualified to hear cases in which a party is represented by an attorney who is currently representing the executor and the estate of the judge's late uncle? **Answer:** No, absent an adversarial or representational relationship between the judge and the attorney.

## FACTS

A circuit judge's uncle died.  By will, he left all his property to the judge and four other cousins.  The judge's cousin-in-law is the executor.  A local attorney probated the will and represents the executor and the estate. There are currently no contested issues in the proceeding and none are expected to arise.

## DISCUSSION

Canon 3C(1) provides 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 this canon. The first subsection includes cases in which the judge has a personal bias or prejudice concerning a party. Canon 3C(1)(a).  The inquiring judge has no such bias or prejudice.

Since none of the other subsections of Canon 3C(1) potentially apply, the question is whether the judge's impartiality could reasonably be questioned in cases in which a party is represented by the attorney representing the executor and the estate of the judge's late uncle.  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).

Canon 3C(1) requires disqualification to hear cases involving an attorney who is currently representing the judge, or a party opponent to the judge, in unrelated litigation. *See, e.g.*, Advisory Opinions 80-74, 87-313, 89-373, and 98-704.  In Advisory Opinion 87-313, the attorney was serving as attorney for an estate for which the judge was the executor.   In Advisory Opinion 89-373, the attorney was guardian ad litem for the judge's niece in the administration of the judge's father's estate and the niece's claims to the estate were unresolved, creating a legal adversarial relationship due to the judge's interest as another heir.

In the situation under consideration, the attorney does not represent the judge.  Since there are no contested issues in the proceeding, the attorney is neither acting on behalf of the judge in connection with competing claims nor serving in a capacity adversarial to the judge. *Compare*, Advisory Opinion 00-759 (attorney representing the

judge's daughter who, as executrix of her grandmother's estate, had filed a wrongful death action and the judge's spouse had an interest in the outcome).

It is the opinion of the Commission that the judge is not disqualified to hear cases in which a party is represented by an attorney who is representing the executor and the estate of the judge's late uncle when there is no adversarial or representational relationship between the judge and the attorney.

## REFERENCES

Advisory Opinions 80-74, 87-313, 89-373, 98-

704 and 00-759.

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.