

JUDICIAL INQUIRY COMMISSION

DATE ISSUED: MAY 31, 2002

ADVISORY OPINION 02-797

DISQUALIFICATION DUE TO MEMBERSHIP IN DEFENDANT ORGANIZATION

ISSUES

Is a judge disqualified to hear a negligence action against a local YMCA when the judge and his spouse are members of the same branch of the YMCA and regularly use its facilities? **Answer:** No, but the judge should disclose the memberships to the parties in order to avoid any appearance of impropriety.

FACTS

The local YMCA has been sued. It is alleged that, as a result of negligent supervision by employees and/or dangerous conditions existing on the premises, a child was injured on the playground. The YMCA has denied liability, and it has ample insurance coverage for the alleged injury. The judge and his family are members of the same branch of the YMCA, and he and his wife regularly use its facilities. This is the judge's only connection with the case. The judge knows nothing about the facts of the case nor any of the individuals sued.

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 the inquiring judge has no bias or prejudice concerning a party in this case.

Since none of the other subsections of Canon 3C(1) potentially apply, the question is whether the judge's impartiality could reasonably be questioned under the stated facts. 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).

Because the nature of a YMCA membership is such that it merely permits the member to use the facility, the Commission does not believe that the disclosed facts create a reasonable question as to the judge's impartiality. Thus, it is the opinion of the Commission that the judge is not disqualified based upon those facts. However, the Commission does think it would be appropriate for the judge to disclose his and his spouse's YMCA memberships to the parties, in order to avoid any appearance of impropriety.

REFERENCES

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).

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.