

JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 03-812

DISQUALIFICATION DUE TO PAST REPRESENTATION OF A PARTY BY A CLOSE RELATIVE

ISSUES

Is a judge disqualified to hear work release requests, house arrest requests, or other post trial matters concerning jail inmates who were represented by the judge's nephew in the trial proceedings that resulted in their incarceration? **Answer:** Past representation does not cause disqualification absent special additional circumstances, such as the matter involving an issue litigated by the nephew or questions concerning the representation provided.

FACTS

A circuit judge has received several requests to be placed on work release or house arrest by inmates who are serving time in the local jail. Inmates also present other post trial matters to the court. In some cases, the inmate was represented by the judge's nephew in the trial phase of the case that resulted in the incarceration, but the inmate is no longer represented by the judge's nephew.

DISCUSSION

Canon 3C(1)(d)(i) provides that a judge is disqualified when, *inter alia*, a person within the fourth degree of relationship to the judge or the judge's spouse is an officer, director or trustee of a party. This provision has always been interpreted to cause disqualification of a judge where a party's attorney is related to either the judge or the judge's spouse within the fourth degree, either by consanguinity or affinity. *See* Advisory Opinion 97-637 and prior opinions cited therein. This disqualification is subject to remittal under

Canon 3D. Advisory Opinions 95-546 and 97-637.

The Commission has previously recognized that recusal is ordinarily no longer required once a ground for disqualification ceases, provided no special circumstances giving rise to a continued reasonable question about the judge's impartiality exist. *See* Advisory Opinions 96-617 and 94-516. It is the opinion of the Commission that a judge is not disqualified to hear work release requests, house arrest requests, or other post trial matters concerning jail inmates who were represented by the judge's nephew in the trial proceedings that resulted in their incarceration so long as the representation has ceased and no special circumstances exist that create a continued reasonable question concerning the judge's impartiality. For example, the judge would be disqualified if the matter presented to him involved an issue his nephew litigated or questions about the representation his nephew provided.

REFERENCES

Advisory Opinions 94-516, 95-546, 96-617, 97-637.

Alabama Canons of Judicial Ethics, Canons 3C(1)(d)(i) and 3D.

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.