

JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 03-824

LOCAL BAR FUNDING A JUDGE'S
EMPLOYEE'S SALARY

ISSUES

Do the Canons of Judicial Ethics permit payment of a judge's research assistant's salary by the local bar association, either directly or through the Administrative Office of Courts? **Answer:** No.

FACTS

Budget cuts will result in the layoff of a number of employees in the state judicial department. A circuit judge's research assistant is among those scheduled to be laid off. The local bar association has asked him whether it can pay this employee's salary, either directly or through the Administrative Office of Courts. The duties of the research assistant include acting as a liaison between the judge and attorneys, contacting attorneys as to the status of cases, and assisting the judge in working case files in order to keep the files current.

DISCUSSION

Canon 2 requires a judge to avoid the appearance of impropriety. Canon 2A states that a judge "should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." These principles are repeated in Canon 3C(1), in the context of disqualification. Canon 3C(1) provides that a judge "should disqualify himself in a proceeding in which . . . his impartiality might reasonably be questioned." The issue 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).

In Advisory Opinion 01-778, the Commission concluded that a judge would be disqualified to hear cases in which a party was represented by an

attorney or a law firm who was the judge's judicial assistant's part-time employer. In the Commission's opinion, such employment would create a reasonable question as to the judge's impartiality.

More recently, in Advisory Opinion 03-821, the Commission decided that it would not be proper under the canons for a particular position to be funded in part by the district attorney's office. The proposed position was a law librarian/ courthouse security receptionist; the employee would have served as a joint employee of both the district attorney's and the judges' offices, guarding entrance to a closed area of the courthouse that contains the offices of the judges, their judicial assistants and court reporters, and the district attorney. The Commission found that the situation contemplated would create an improper perception that the judges and the district attorney work together, rather than independently from one another, and that this would erode the perception of judicial independence that is central under the canons, contrary to Canon 1, and create a wrong appearance of impropriety, contrary to Canon 2. The Commission was also of the opinion that the resulting appearance of a joint operation would create a reasonable question as to the judges' impartiality and, thus, cause disqualification to hear cases prosecuted by the district attorney's office.

In the situation now presented, there would be a reasonable basis for questioning the judge's impartiality in cases in which one party was represented by an attorney who contributed to the salary of the judge's employee and another party was not. Even if all local attorneys contributed, there would be a problem when a party either was represented by out-of-town counsel or appeared *pro se*. The arrangement would create an appearance of impropriety, erode confidence in the integrity and impartiality of the judiciary, and interfere with the proper performance of the judge's duties by causing disqualification to hear cases.

It is the opinion of the Commission that the Canons of Judicial Ethics do not permit payment of a judge's research assistant's salary by the local bar association.

REFERENCES

Advisory Opinions 01-778 and 03-821.

Alabama Canons of Judicial Ethics, Canons 2, 2A and 3C(1).

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

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.