

# JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 04-842

DISQUALIFICATION WHEN AN ATTORNEY IS A MEMBER OF A FIRM REPRESENTING AN ESTATE AND THE JUDGE IS AN EXECUTOR OF A CREDITOR ESTATE

## ISSUE

Is a judge disqualified to hear cases in which a party is represented by an attorney who is a member of a firm another member of which represents an estate when the judge is the personal representative of another, creditor estate? **Answer:** No.

## FACTS

A circuit judge serves as the personal representative of an estate. He was nominated in the decedent's will as co-executor of the estate. His service to the estate has not interfered with his official duties and, due to the nature of the cases he hears, no issue involving the estate would ever be assigned to him. However, the estate has filed a claim in another decedent's estate, and the latter estate is represented by an attorney with a firm a partner in which appears in the judge's court on a frequent basis. The attorney who appears before the judge does not represent the second decedent's estate.

## DISCUSSION

Canon 3C(1) provides generally that a judge should disqualify himself in any proceeding in which his "impartiality might reasonably be questioned." Under Canon 3C(1), recusal is required when "facts are shown which make it reasonable for members of the public or a party, or counsel opposed to question the impartiality of the judge." *Acromag-Viking v. Blalock*, 420 So.2d 60, 61 (Ala. 1982). Specifically, 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?" *Matter of Sheffield*, 465 So.2d 350, 356 (Ala. 1984).

The Commission has long held that Canon 3C(1) requires disqualification of a judge to hear cases in which a party is represented by an attorney who is currently also representing a party opponent to the judge in unrelated litigation. *E.g.*, Advisory Opinions 88-337, 89-373, 95-588, and 00-759. However, disqualification due to the appearance of an attorney representing a party opponent to the judge ordinarily only applies to the particular attorney or attorneys involved in the litigation in which the judge has an interest. In other words, disqualification usually does not extend to other members of such attorneys' firm, and the judge is disqualified only if there are extraordinary additional circumstances causing a reasonable question as to the judge's impartiality. Advisory Opinions 95-584 and 96-623; *see* Advisory Opinion 99-731.

Under the facts presented, the Commission is of the opinion that the judge is not disqualified to hear cases of the attorney in question.

## REFERENCES

*Acromag-Viking v. Blalock*, 420 So.2d 60 (Ala. 1982).

Advisory Opinions 88-337, 89-373, 95-584, 95-588, 96-623, 99-731 and 00-759.

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

*Matter of 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).