

JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 04-845

DISQUALIFICATION IN CASES INVOLVING CITY POLICE WHEN A RELATIVE OF THE JUDGE IS THE MAYOR

ISSUES

I. Is a circuit judge whose spouse is mayor of a city located within the geographic jurisdiction of the judge's court disqualified from hearing any of the following matters?

- a. Criminal jury trials in which witnesses might include police officers from the city.
- b. Youthful offender applications and youthful offender trials in which witnesses might include police officers from the city.
- c. Motions to suppress or motions to exclude evidence as to which witnesses might include police officers from the city.
- d. Trials in which the defendant is charged with assault of a police officer from the city.

Answer: The judge is disqualified only if a ground of disqualification listed in a subsection of Canon 3C(1) exists, or additional circumstances otherwise create a reasonable question as to the judge's impartiality.

II. Does the judge have a duty to disclose in cases in which police officers are potential witnesses? **Answer:** The judge should disclose the relationship; this may be done in open court, by written notice to the parties, or by filing the information with the clerk of the court.

FACTS

A circuit judge's spouse has been elected the mayor of a city within the geographic jurisdiction of the court where the judge sits. The judge typically hears a number of types of proceedings in which a police officer from this city might testify as a witness, including criminal jury trials, youthful offender applications and youthful offender trials, and mo-

tions to suppress and motions to exclude evidence. The judge may also be expected to be assigned cases in which a criminal defendant is charged with assaulting a police officer employed by the subject city.

DISCUSSION

The inquiring judge has reviewed Advisory Opinion 99-741, in which the Commission answered a number of questions posed by a district judge whose spouse had just been elected mayor of the city in which the judge sat. The conclusions the Commission reached in that opinion regarding *ex parte* warrants, *ex parte* bond matters, and civil trials apply to the inquiring judge's situation.

In Advisory Opinion 99-741, the Commission wrote that the mere fact that the judge's spouse is the mayor does not constitute a ground to reasonably question the judge's impartiality when a criminal case clearly is a prosecution directed by the district attorney. The Commission continues to hold this opinion, and it believes that it is largely dispositive of the questions now presented.

The judge is, of course, disqualified in any proceeding in which she has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts, as a result of her spouse's position as mayor. Canon 3C(1)(a). Likewise, she is disqualified if a case arises in which her husband has an interest that could be substantially affected by the outcome of the proceeding (Canon 3C(1)(c) and 3(c)(1)(d)(ii)). Disqualification arising under Canon 3C(1)(a) is not subject to remittal. Disqualification arising under Canons 3C(1)(c) or 3C(1)(d) may be remitted under the procedure in Canon 3D.

If none of the foregoing specific grounds of disqualification exist, the judge is only disqualified in any of the proceedings in question if her impartiality is otherwise reasonably questionable by virtue of her relationship to the city's mayor.

In Advisory Opinion 89-353, the circuit judge's spouse was a city attorney, responsible for the management of the city attorney's office and several assistant city attorneys. The Commission decided the judge was not automatically disqualified from sitting in cases in which an assistant city attorney was counsel, but was disqualified if the city attorney participated in the proceeding, either directly as counsel or indirectly by actively directing the actions of the city attorney's office in the proceeding. The Commission advised the judge to make the necessary determination as to her spouse's participation at the outset of each proceeding.

The Commission also has addressed other cases in which a close relative of a judge was employed by a government agency that was involved in litigation other than as a party. In these cases, the Commission has concluded that, absent a ground of disqualification specifically listed in a subsection of Canon 3C(1), a judge's impartiality is not reasonably questionable unless the relative has some personal or direct involvement or interest in the case. Advisory Opinions 86-286, 88-345 and 97-632.

In Advisory Opinion 93-504, a judge whose cousin was a member of the city council had asked whether he was disqualified to hear appeals from decisions of the municipal board of zoning adjustment. The members of the board were appointed by the city council and were reimbursed for expenses, but the board was otherwise autonomous from the council. The Commission held the judge was not disqualified to hear such appeals unless his cousin had an interest that could be substantially affected by the outcome of the appeal.

It is the opinion of the Commission that the mere fact that the judge's spouse is mayor does not create a reasonable question as to the judge's impartiality in proceedings of the type described in the statement of the issues presented, *supra*. If the judge's spouse has a personal interest or direct involvement in a particular case, then the judge is disqualified to hear the case.

The remaining issue presented is whether the judge has a duty to disclose her relationship to the mayor in cases in which city police are witnesses.

The Alabama Canons of Judicial Ethics do not expressly require disclosure of interests or relationships the judge does not deem disqualifying. Canon 3E states that a judge who does not deem himself or herself disqualified *may* make information concerning interests or relationships available, either by filing that information in the office of the clerk of the judge's court or by causing notice to be given to the parties to the proceeding. Under Canon 3E, it is the duty of the parties to familiarize themselves with any materials available for inspection in the clerk's office.

It is the opinion of the Commission that the judge in this case should disclose her relationship to the mayor. Disclosure would be beneficial in that it would prevent any appearance of impropriety from resulting if a party learns of the relationship after the fact. It also would put the parties on notice so they can bring to the judge's attention any special circumstances in a particular case. Relationship information such as this may conveniently be disclosed by filing a statement with the court clerk, or the judge may give notice in open court or cause written notice to be given to the parties.

REFERENCES

Alabama Advisory Opinions 86-286, 88-345, 89-353, 93-504, 97-632 and 99-741.

Alabama Canons of Judicial Ethics, Canons 3C(1), 3C(1)(a), 3C(1)(c), 3C(1)(d), 3C(1)(d)(ii) 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, 800 South McDonough Street, Suite 201, Montgomery, Alabama 36104; tel.: (334) 242-4089; fax: (334) 240-3327; e-mail: jic@alalinc.net.