

# JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 01-778

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DISQUALIFICATION WHEN THE JUDGE'S JUDICIAL ASSISTANT IS EMPLOYED PART-TIME BY AN ATTORNEY

## ISSUES

Would the part-time employment of a circuit judge's judicial assistant by an attorney cause disqualification of the judge from cases involving the attorney or his firm? **Answer:** Yes.

## FACTS

A circuit judge's judicial assistant is considering seeking part-time employment on nights and weekends. The judge inquires whether the judicial assistant's part-time employment by an attorney would result in his disqualification from any cases involving that attorney or firm, and whether such employment would be a conflict in the confidential nature of the judicial assistant's employment with the judge.

## DISCUSSION

Since it does not appear that any of the other specific grounds for disqualification stated in the subsections to Canon 3C(1) apply, the issue presented is whether the judge would be disqualified under that canon's general provision requiring disqualification when the judge's "impartiality might reasonably be questioned." The test under this canon 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).

A trial judge's judicial assistant has a special relationship with the judge. The same standards for disqualification should apply in situations involving the judicial assistant as would apply to the judge. Advisory Opinion 88-333. The judge himself undoubtedly would be disqualified from hearing cases involving a law firm with which he was employed part-time. In Advisory Opinion 83-194, the Commission concluded that a part-time judge should not share office space with a part-time prosecutor, finding that such an arrangement would cause his disqualification in all cases prosecuted by the attorney in question. *See also*, Advisory Opinion 81-123 (a judge should recuse himself from any proceeding in which the judge's part-time employer is a party).

It is the opinion of the Commission that a judge is disqualified to hear cases in which a party is represented by an attorney or law firm who is the judge's judicial assistant's part-time employer. Such employment would create a reasonable question as to the judge's impartiality.

## REFERENCES

Alabama Advisory Opinions 81-123, 83-194, and 88-333.

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

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

*In re 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, 800 South McDonough Street, Suite 201, Montgomery, Alabama 36104; tel.: (334) 242-4089; fax: (334) 240-3327; E-mail: [jic@alalinc.net](mailto:jic@alalinc.net).