

JUDICIAL INQUIRY COMMISSION

DATE ISSUED: JULY 9, 2004

ADVISORY OPINION 04-841

DISQUALIFICATION WHEN A RELATIVE OF THE JUDGE HAS AN EMPLOYMENT RELATIONSHIP TO A PARTY

ISSUE

Does the fact that the judge's daughter is a substitute teacher who intends to seek permanent employment in the county public school system disqualify the judge from hearing a case related to a school board contract in which some members of the board are defendants? Answer: No.

FACTS

The judge's daughter has been employed as a substitute teacher in a county school system and she intends to ask to be made permanent for the coming school year. The judge has been assigned a case in which some members of the school board, along with other parties, have been sued for defamation, interference with a contract with the school board associated with building projects, and other wrongful acts in connection with the plaintiff's dismissal from the job for which he had been hired by the school board.

DISCUSSION

The Commission has previously addressed the issue of disqualification due to employment of a judge's relative by a party to a case. Advisory Opinions 80-73, 81-103, 82-133, 86-286, 88-322, 88-345, 92-462, 97-632, and 99-721. The judge's daughter is not an employee of a party. However, prior opinions involving a relative employed by a party are instructive as they involve a similar, closer relationship than the one presented.

Four prior opinions have involved school system cases when a close relative of the judge was a teacher employed by the school system. Advisory Opinions 80-73, 81-103, 88-322, and 99-721. In each, the Commission found the mere fact the relative was employed

as a teacher by the school system did not disqualify the judge from hearing the case as this relationship alone is insufficient to create a reasonable question as to the judge's impartiality under the general provision governing disqualification in Canon 3C(1). Rather, disqualification was found not to result unless (a) the judge had a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding, as a result of his relative's employment (Canon 3C(1) (a)); (b) the judge's relative was known by the judge to have an interest that could be substantially affected by the outcome of the proceeding (e.g., the outcome might affect salary or employment status) (Canons 3C(1)(c) and 3C(1)(d)(ii)); (c) the judge's relative was to the judge's knowledge likely to be a material witness in the proceeding (Canon 3C(1)(d)(iii)); or, (d) the judge's relative had some other personal involvement in the matter in controversy that required disqualification through causing the judge's impartiality to be reasonably questionable (Canon 3C(1)).

As none of the foregoing additional circumstances exist, the Commission is of the opinion that the inquiring judge is not disqualified to hear the subject case.

REFERENCES

Advisory Opinions 80-73, 81-103, 82-133, 86-286, 88-322, 88-345, 92-462, 97-632, and 99-721.

Alabama Canons of Judicial Ethics, Canons 3C(1), 3C(1)(a), 3C(1)(c), 3C(1)(d)(ii) and 3C(1)(d)(iii).

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.