

JUDICIAL INQUIRY COMMISSION

DATE ISSUED: OCTOBER 11, 2002

ADVISORY OPINION 02-806

DISQUALIFICATION WHEN A MEMBER OF THE JUDGE'S REFEREE'S LAW FIRM IS AN ATTORNEY IN THE CASE

ISSUES

May a judge hear cases in which a party is represented by an attorney who is a member of a law firm in which a referee appointed by the judge practices law? **Answer:** Yes, so long as the referee has not acted as a lawyer in the case.

FACTS

A circuit judge has a part-time referee who assists with the handling of paternity and child support cases. The referee had previously retired from the practice of law but now has decided to join a local law firm "of counsel." He is planning to work several days a week with the firm. The judge inquires whether he may hear family court cases in which a party is represented by another member of this firm.

DISCUSSION

The Commission has previously concluded that a judge is disqualified under Canon 3C(1) from hearing cases in which a party is represented by an attorney appointed by the judge then assisting the judge on a regular, ongoing basis with other cases over which the judge presides. The Commission reasoned that, because a referee who assists a judge on a continuing basis stands in a position of close trust with the judge, and the judge, of

necessity, must repose special confidence in such a referee, a person of ordinary prudence might reasonably question the judge's impartiality in a case in which that referee represents a party. Advisory Opinions 99-736, 00-754, and 00-757. Canon 3C(1) requires disqualification in any proceeding in which the judge's "impartiality might reasonably be questioned."

A judge has no special relationship of trust with law partners of an attorney whom the judge has appointed as a referee. Thus, the mere fact that an attorney in a case is a law partner of a referee appointed to assist the judge in other cases does not constitute a reasonable basis to question the judge's impartiality.

This situation is analogous to that in which an attorney appears who is a law partner of an attorney currently representing the judge in an unrelated case. *See, e.g.*, Advisory Opinion 99-731. In that situation, the Commission has concluded that the judge may hear the case if the attorney has no involvement in the judge's case. *Id.*

It is the opinion of the Commission that the Alabama Canons of Judicial Ethics permit a judge to hear cases in which a party is represented by an attorney who is a member of a firm in which a referee assisting the judge in other cases practices, so long as the referee has not participated as an attorney in the case before the judge. If the referee has performed legal research, interviewed witnesses, drafted

documents or in any other way been actively involved in the case, the judge should recuse himself from the matter.

REFERENCES

Alabama Advisory Opinions 99-731, 99-736, 00-754, and 00-757.

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

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.